

*Nov 14 2023 3:55 pm**Office of the***Board of Health**

City Hall
718 Main Street
Fitchburg, Massachusetts 01420
978-829-1870

This was a regular meeting of the Board of Health held at the Legislative Building at 700 Main Street and recorded by FATV Studios, Thursday, September 7, 2023. The meeting was called to order by Dr. Bogdasarian.

Present: Stephen Curry, Director, Dr. John Bogdasarian, Chair, Ian Murray-BOH Member, Diane Tousignant-BOH Member, Karen Membrino, Clerk Stenographer, Peter Delorme, Weights & Measures Inspector, Joan Hamlett, Tobacco Control Agent, Todd Pickett, ACO, Julie Busa, Asst. ACO, Jacquelyn Wehtje, Resident, Robert Danus, Patriot Gas, Sam Souza, Dogs Owner, Ashley Craigen, Ann Craigen, Amy Minechello, (Petitioners)

Public Forum

Jacqueline Wehtje Fitchburg resident speaking on agenda item 2A. Ms. Wehtje stated that the Board should show mercy to this small business owner furthermore and rescind all local tobacco regulations. Massachusetts already has the strictest state regulations in the nation and we don't need local regulations as well as many of them duplicate the state regulation and yet count as a separate violation escalating fines for example from \$1000 to \$3000 or from \$3000 to \$5000. Last year the Health Department alone imposed \$27,994 in fines and this is why Fitchburg has such a bad reputation as being hostile to businesses. The only tobacco rule you need to worry about is sales to minors, let adults do what they want with their bodies. You fine people for things like sale of flavored palm leaves with no tobacco in them, this is just a money grab, people don't smoke weed to get the fruity flavor of a blunt wrap they smoke weed to get high and maybe to pardon the pun blunt the anxiety of dealing with your department. Leave this businessman alone and all the others who, if you're last tobacco hearing is indicative, you notify of constantly changing list of banned products by leaving clerks written notices in a language that they don't read or write or notices which may never even reach them. In Ferguson MO the government officials make big bucks off of poor communities through onerous, fines shame on you.

Meeting Minutes:

Mr. Murray made a motion to approve the meeting minutes from June 2, 2023. Dr. Bogdasarian 2nd the motion. All were in favor, motion carries.

Mr. Curry introduced the Health Department's new employee, Peter Delorme. Mr. Delorme will be the Weights & Measure Inspector as well as a part time Regional inspector and also cover the Fitchburg/Westminster Landfill Scalehouse when the need arises.

Mr. Delorme stated he spent a few months at the Landfill covering for an employee that was out on sick leave and is currently learning the Weights & Measures end of the job which includes making sure gas stations are selling the right amount of gas that is posted as well as facilities that are certified by the Department of Standards and checking all the local scales to make sure that the customers are getting what they are paying for.

Hearing Requests:

a. Patriot Gas, 240 Lunenburg St – Robert Danus – 105 CMR 665.00 Tobacco Violations.

Dr. Bogdasarian stated the reason for this hearing is because of noncompliance with the Massachusetts State Sanitary Code, Minimum Standards for Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

This is a formal hearing. All affected parties shall be given an opportunity to be heard, to present witnesses or documentary evidence regarding non-compliance with Regulations of the Board of Health Restricting the Sale of Tobacco Products and the Massachusetts State Sanitary Code Minimum Standards of Retail Sale of Tobacco and Electronic Nicotine Delivery Systems.

At this hearing the Board of Health will decide whether a fine, suspension or both, or take no action should be taken against the owner and or the establishment which holds a permit for the sales of Tobacco and Nicotine Delivery products from the Fitchburg Board of Health.

Joan Hamlett Tobacco Control Agent stated we inspect every store in the community all in the same month the same time frame and in the same manner and this store was not a targeted store. This was a regular routine annual inspection for Patriot Gas. Ms. Hamlett also stated that since Mr. Danus has owned the store, he's not been on our radar and we've had a previous violation which was just a warning of flavor enhancer back in 2022.

On 5/15/2023 and 6/7/2023 there was a sale to a minor that occurred. This was a little bit more concerning than a typical sale to a minor because at the inspection the youth inspector asked for Russian Cream which is a restricted flavored product. The employee asked if they had a card from the store and the inspector said no they only want the Russian Cream. Another male staff person came out and said he obviously knew what was going on just to tell him the routine, so the clerk said they would give him a card and when you come in you need to just put the card down and ask for your product and we'll sell it to you. They did not ask him for an ID they handed him the card they took the Russian Cream from out from underneath the counter and sold it to the youth inspector whom is a minor.

Ms. Hamlett said on the second inspection on 6/7/23 we sent the youth inspector in and told them to ask for the Russian Cream and the clerk pulled it out from underneath the counter. The Clerks said it was \$7.55 and the Inspector only had \$6 so the clerk said to him, you can't have the Russian Cream but you can have the plain so he sold them the Russian plain.

Ms. Hamlett said we have two sales to a minor which we could have went on and done further investigation but at this point we're talking \$1000 fine with three day suspension. The second offense is a \$2000 fine with a 10 day suspension which is under the state law that requires the Board to use those fines. This isn't a local regulation this is the Board's responsibility under the state law.

Our goal in public health is to help retailers come into compliance. We've done significant education, we go to the store and we hand deliver an education packet every year and go over it with the owners and managers and they sign that they receive it. In addition to emailing it and mailing it by mail to make sure that all of our retailers know what the law is.

Mr. Danus stated he has been in Fitchburg now since 2015 and has not had one issue with anybody. He stated he can't deny it was sold at his store as it was absolutely sold in my store. He said he was absent from the store since March to the middle of June and had no idea about this tobacco sale until he received the letter. He stated he didn't receive the letters until the beginning of June or thereabouts the middle of June of which one was done May 15th and the other one was June 7th.

Mr. Danus said he has hired a new manager as well and spends most hours at the store himself and would never sell illegal items in his store, and always tells his employees to card no matter who it is and he would always abide by the town policies.

While lengthy discussion ensued the members of the Board of Health asked numerous questions to Mr. Danus and the Tobacco Control Agent.

Dr. Bogdasarian made a motion that the Board will assess the \$3,000 dollar fine for two violations and a one (1) day mandatory fine for the first violation and continuing the suspension of tobacco products and any additional suspensions being held for further conduct. Motion was 2nd by Ian Murray. All were in favor, motion carries.

The Board of Health will order a 1-day (24 hour) suspension to be served on Sunday, October 1, 2023. The remaining (2) two days of the permit suspension for the 1st violation and (7) days for the 2nd violation are continued without a finding pending there are no other violations within a 36-month period.

b. Dog Complaint: various St. Joseph Ave residents regarding 5 dogs residing at 102 St Joseph Ave., owned by Samuel O. Souza and Paola Souza.

Dr. Bogdasarian stated the reason for this hearing today is due to written requests of John Mills of 88 St. Joseph's Ave, Ashley Craigen of 78 St. Joseph Ave. and Ann Craigen of 78 St. Joseph Ave., petitioning this board to deem that the dogs owned by Samuel O Souza and Paula Souza of 102 St. Joseph Ave. nuisance dogs and dangerous dogs according to MGL. 140 Section 157.

Ashley Craigen stated she has lived at 78 St. Joseph Ave. for three years and there were two possibly three small dogs at the residence that were always kept in the crate outside all day long and barked a lot, it was tolerable however they now have two German shepherds and there is continuous barking all day. The barking is nonstop and no one is trying to quiet them down and they don't put them inside. Animal Control has been called several times but they have reached the maximum amount of things they can do.

Ann Craigen stated she lives four houses down from one 102 St. Joseph Ave and when the Souza's moved in, there were small dogs and they were kept in a cage, in the backyard and yes they're yappy. Ms. Craigen then stated that she tolerated the barking but the German Shepherds, the bigger dogs, have a bigger bark and bark all day and night. Ms. Craigen said she is retired and home most of the day and hears them probably more than most of the neighbors. She doesn't feel they are dangerous dogs however the barking has to stop.

Amy Minnechello stated she is Ann Craigen's daughter and has been over to her mother's house on several occasions and have witnessed the dogs barking all day continuously as well as all night long.

Mr. Souza stated that he is doing everything he can to stop the problem and he is not a bad person and he doesn't want to bother the neighbors, he wished they would go to him regarding the issue.

The Petitioners stated they went through the correct channels and did not want animosity between neighbors.

The Board of Health members asked numerous questions to both the Petitioners and Mr. Souza.

Julie Bosa the Asst. ACO stated that this issue has been going on for a long time. She stated that she recommends the dogs be brought into the house, which will abate the problem.

Dr. Bogdasarian stated the definitions of nuisance dogs is a dog that by excessive barking or other disturbance is a source of annoyance to a person residing in the vicinity or by excessive barking causing damage or other interference or reasonable person would find such behavior disruptive to one's quiet and peaceful enjoyment.

Dr. Bogdasarian made a motion that to consider all five dogs as nuisance dogs and none of them as a dangerous dog. Motion was 2nd by Ian Murray. All were in favor, motion carries.

Dr. Bogdasarian made a motion that the barking be controlled within a two month time period and reconvene at that time at a BOH meeting with a progress report. Motion was 2nd by Ian Murray, all were in favor, and motion carries.

Announcements:

Dr. Bogdasarian stated he wants to encourage people to get vaccinated for Flu, RSV and COVID-19. There are new variants coming out especially those who have diabetes or are immune compromised for various reasons or other health issues.

Mr. Curry stated on Saturday September 30th at the upper common from 10:00am to 12:00pm will be a recovery day of service this service brings together people from all walks of life to give back to their community. It's a day they recognize that recovery and community successes as well as the power of engagement.

Mr. Murray made a motion to adjourn. Motion was 2nd by Diane Tousignant. All were in favor, Motion carries.