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MEETING MINUTES

City of Melrose
City Hall
562 Main Street
Melrose, MA 02176

Committee/Board: Board of Health

Meeting Day/Date/Time: Thursday, March 21, 2024

Location: Milano Center, 201 West Foster Street
Tierney Hall

Call to Order: Frank Brincheiro
Second by: Carol Ann Licitra

Time Called: 6:34 PM

In Attendance/Roll Call:

Board Members: Frank Brincherio, Carol Ann Licitra, Lillian Kelly

Health Department: Director Anthony Chui; Administrative Assistant Christy Bolduc; Maureen Buzby Regional Tobacco Program Coordinator

Approval of Minutes for October 3, 2023, January 17, and February 22, 2024, Meetings:

Lillian Kelly made a motion to accept the minutes from the meetings.

Carol Ann Licitra second the motion

Further Discussion: None

Frank Brincheiro– Yes

Carol Ann Licitra – Yes

Lillian Kelly – Yes

PASSED 3-0-0

Public Comment was opened by Lilian Kelly

Carol Ann Licitra second the motion

Frank Brincheiro– Yes

Carol Ann Licitra – Yes

Lillian Kelly – Yes

PASSED 3-0-0

Maureen Buzby quoted 2 paragraphs from the SJC decision: “Local communities have a lengthy history of regulating tobacco products to curb the well-known adverse health effects of tobacco

use” ... “That the bylaw goes further does not render it incompatible with the State statute; instead, the bylaw augments the State statute by further limiting access to tobacco products to persons under the age of twenty-one.”

Chris Duffy, CEO of James J Duffy, Inc., argues that we need to educate the youth about the dangers of tobacco and not ban tobacco products. He also makes note that Brown University School of Public Health is stating that vaping is an effective offer to quit smoking cigarettes.

Ben Brooks, owner of Shell Station 860 Main St, Melrose, is concerned and argues that they are not selling to anyone under 21 as they scan all IDs. Also, there will be an increase in confrontation between convenience store workers and tobacco product buyers if there is a ban. Lastly if they can't sell tobacco products the stores will financially be devalued as that portion of the business will not exist.

Frank Brincheiro made a motion to table Public Comment
Carol Ann Licitra second the motion

Further Discussion: None
Vote to table Public Comment:
Frank Brincheiro— Yes
Carol Ann Licitra – Yes
Lillian Kelly – Yes
PASSED 3-0-0

Mark Gottlieb, public health attorney, and Maureen Buzby explained to the board how Brookline's Tobacco-Free Generation law was first passed at a town meeting in November 2020. Since then, the tobacco retailers appealed, and the case is now at the SJC. Buzby stated how the proposal will allow store clerks to remember one date only, which is 1/1/2020. Prohibiting anyone born before that date from ever buying tobacco products. The start date for this law is proposed to go into effect 1/1/2025. There is also a discussion on signage and to ensure it is very clear to the public being simple and clear. Also working with the building department to insure following proper signage zoning rules.

Anthony Chui – see attached [Post – SJC Decision NFG Update to the Board of Health](#)

The board decided to take time to review Nicotine Free Generation and vote next meeting.

Anthony Chui requested the board to have a public hearing on bodywork regulations and invite the bodywork businesses for their input. The suggested changes include hours of operation, prohibiting sleeping at the establishment, and record keeping. Also giving a 60-day grace period before enforcing the changes.

The board has agreed to vote on the bodywork regulations change at the May meeting, after the Nicotine Free Generation vote in April.

Health directors report announces the hire of Kristen Mellow, the new social service coordinator scheduled to start early-April. She has a background in social work and has worked with DCF Courts.

Next BOH Meeting in Melrose is April 19, 2024

Lillian Kelly made a motion to adjourn the meeting at 7:36 PM

Carol Ann Licitra second the motion to adjourn the meeting.

Further Discussion: None

Vote to adjourn the meeting:

Frank Brincheiro– Yes

Carol Ann Licitra – Yes

Lillian Kelly – Yes

PASSED 3-0-0

Meeting Adjourned at 7:36 PM

Post-SJC Decision NFG Update to the Board of Health

On Friday, March 8th, 2024, the Supreme Judicial Court of Massachusetts unanimously ruled in favor of the Town of Brookline.

The proposed Nicotine Free Generation policy to the Board of Health is as follows:

“Prohibition of Sales – No person, firm, corporation, establishment, or agency shall sell tobacco or e-cigarette products to anyone born on or after 1/1/2004.

Any person, firm, corporation, establishment, or agency who or which shall violate any provisions of this regulation and upon written notification shall be fined and suspended according to the schedule set forth under the Regulation of the Melrose Board of Health Restricting the Sale of Tobacco Products.”

On July 19, 2021, the Town of Brookline sought approval from then-Attorney General Maura Healey concerning the proposed policy. The reason cited by the AG was that both the Tobacco Act (21) and the bylaw aim for the same goal of barring the sale of tobacco products to those under the age of twenty-one, and because the bylaw simply goes further than the Tobacco Act (21), and given the broad public health power of municipalities to regulate tobacco products, the bylaw was not inconsistent, contrary, or conflicting with the Statewide minimum sales age.

The SJC highlighted key points in its decision to uphold the regulation passed by the Town of Brookline.

- “Importantly, state laws and local ordinances and bylaws can and often do exist side by side.”
- “This is particularly true of local ordinances and bylaws regulating public health, the importance of which we have long acknowledged.”
 - (“[a]mong these [local] powers no one is more important than that for the preservation of the public health”)
 - (“[t]he great object of the city is to preserve the health of the inhabitants”)
 - “With deference to the role local communities historically have played as laboratories for potential Statewide standards, 12 municipal laws are afforded “considerable latitude”; we require “a sharp conflict” between the local and State laws before concluding that the local law is preempted.”
 - “Over time, the bylaw broadens the separation between those under twenty-one years of age and those to whom tobacco products may be sold in the town, eventually banning sales of such products in the town altogether. In

other words, the group two cohort will have less access to tobacco products because it is likely that fewer individuals in their social circles will be able to purchase tobacco, reducing the likelihood that persons in group two will begin to use such products in the first instance.”

- “Also, as the market base for tobacco products in the town shrinks, the economic incentives to sell the products in the town reduce. See *Prohibition Juice Co. v. United States Food & Drug Admin.*, 45 F.4th 8, 12 (D.C. Cir. 2022) (“Businesses seeking to make a profit selling tobacco products . . . face powerful economic incentives to reach younger customers”). In brief, the legislative purpose of the minimum age provision of the act -- namely, to prohibit sales to those under twenty-one years of age -- can be achieved in the face of the local law.”

Many false claims have been and will be presented; unsubstantiated arguments, fearmongering around increasing black market sales, or unsupported constitutional rights claims.

Here are the facts:

- Smoking is still the leading cause of preventable death.
- 480,000 Americans die from smoking-related causes every year.
- Nicotine addiction is the hardest addiction to quit.
- 68% of adult smokers want to quit.
- 55% of adult smokers try to quit every year.
- Only one in ten who try to quit are successful.
- 9 out of 10 smokers started smoking by the age of 18.
- The Tobacco industry spent \$8 billion in 2021 on advertising and promotion.
- RJ Reynolds, one of the big tobacco companies, reported net earnings of \$8 billion for the third quarter of 2023.