



TOWN OF BURLINGTON, MA  
BOARD OF HEALTH  
MINUTES  
TOWN HALL MAIN MEETING ROOM

TUESDAY, MAY 23, 2023

**Board Members Present:** Ed Weiner, PhD, Chairman; David McSweeney, Vice Chairman; Gayle Damore; Andrea Sheehan, and Maribeth Welch

**Board Members Absent:** None

**Staff Members Present:** Susan Lumenello, REHS/RS, CHMM, Director of Public Health; Michael Greene, Associate Health Director, Christine Mathis, Environmental Engineer, Marlene Johnson, Health Agent

**I. Open Meeting/Pledge of Allegiance**

Dr. Weiner called the Board of Health meeting to order at 7:00 PM.

The Pledge of Allegiance was recited.

**II. Approval of Minutes:**

There were no minutes to approve.

**III. Citizen's Time:**

There were no citizen's coming forward.

**IV. Chairman's Report:**

Dr. Weiner brought the Board up to date on the following events: a part-time nurse, community outreach professional, and an epidemiologist were hired last week as part of the shared grant with Lexington and Wilmington; last week we had our annual Health Fair; and next week (June 3) will be Household Hazardous Waste Day at the Fox Hill Elementary School.

**V. Subcommittee Reports:**

***May 10, 2023***

Ms. Sheehan stated that on May 10, 2023 we discussed this potential review or change in Citizen's Time. We could decide to keep things as they are, we could make changes (i.e., set a time limit), or we could eliminate it altogether. We came back with the recommendation to discuss this matter with the rest of the Board this evening.



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**VI. Variance:**

***Corporate Chefs at 25 Mall Rd. – unattended food establishment***

Albert Landry of Corporate Chefs appeared before the Board.

Ms. Johnson stated that an unattended food establishment is an operation typically located in office buildings or restricted break areas where access by the general public is somewhat restricted. These operations frequently offer packaged time/temperature control for safety foods (TCS) and non-TCS food products that are displayed via refrigeration units, food racks, baskets, and/or countertop display units. “Unattended food establishments” may also be equipped with microwave ovens or offer automatically dispensed hot and cold beverages. The one common characteristic of these operations is that they lack the presence of an on-site person-in-charge (PIC). Representatives from Corporate Chefs would like to receive Board of Health approval for a variance from 105 CMR 590.003/Food Code 2-101.11, which requires a PIC be present at the food establishment during all hours of operation, so they may operate an unattended food establishment at 25 Burlington Mall Rd. specifically for building occupants after-hours, when the on site café is closed for the day and on weekends. The Massachusetts Department of Public Health, Food Protection Program provides a “Guidance Document for Unattended Food Establishments” prepared by the Conference for Food Protection (CFP). This document was provided to Corporate Chefs to establish a written food safety plan for the unattended food establishment. I have reviewed and approved their written plan. By following the procedures outlined in their plan, the same level of protection can be achieved.

Ms. Johnson then recommended that the Board approves the unattended food establishment variance for Corporate Chefs at 25 Burlington Mall Rd. with the following conditions:

1. Corporate Chefs, operating at 25 Burlington Mall Rd., shall follow their approved written plan for “Minimum Requirements for an Unattended Food Establishment.”
2. This variance is for the location noted above. Any additional proposed UFEs within the Town of Burlington will require a separate written plan and variance.
3. Violations of this variance may result in an appearance before the Board of Health and may result in a temporary suspension of the food permit. Continued violations may result in the revocation of the variance by the Board of Health.
4. In the event of an imminent or threat of a health hazard, the Board of Health may suspend the food permit without a prior hearing as outlined in 105 CMR 590.014 (A).

Ms. Welch asked if this is the first establishment coming before the Board regarding this variance. Ms. Johnson replied yes.

Mr. McSweeney asked if the personnel that are there between 7 AM – 1:30 PM are in charge of this program too, on a daily basis. Mr. Landry replied yes.



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Dr. Weiner stated that under H of the Corporate Chefs document it reads that “it is the duty of Corporate Chefs to report any concerns of tampering, theft, or unauthorized entry to the property manager for surveillance review.” Dr. Weiner then asked who would you report to. Mr. Landry replied the property manager from Piedmont.

Dr. Weiner then requested to add another condition: “report any food tampering or unauthorized food issues to the Board of Health.”

**MOTION**: Mr. McSweeney made a motion to approve the variance for Corporate Chefs at 25 Mall Rd. – unattended food establishment with the amended condition(s). The motion was seconded by Ms. Welch and voted 5-0-0.

**VII. Permit:**

***4 Marjorie Road – Keeping of Animals (hens)***

Ali Schale of 4 Marjorie Road appeared before the Board.

Ms. Johnson stated that the inspection was conducted by Ms. Hardy on May 17, 2023. The following were found to be in compliance with the Burlington Board of Health, minimum standards for the Keeping of Animals regulation:

- Chicken coop design (proper square footage per hen, proper ventilation, setbacks met)
- Manure management plan (does not cause a nuisance)
- Turf management plan (reseeding grass if needed)
- Feed storage plan (does not attract pests)

Ms. Johnson stated that the recommendation is to approve the Keeping of Animals permit for 4 hens for Ali and Steven Schale, 4 Marjorie Rd. with the following conditions:

1. Notify the Board of Health in advance before increasing the number of hens
2. Do not purchase or acquire a rooster(s) or cockerel(s)
3. Renew the Keeping of Animals permit 30 days before the expiration date
4. Allow the Associate Health Inspector to schedule and conduct an annual compliance inspection
5. Violations of this permit may be subject to penalties as noted under section 9 of the Burlington Board of Health, minimum standards for the Keeping of Animals

**MOTION**: Ms. Sheehan made a motion to approve the Keeping of Animals permit at 4 Marjorie Rd. The motion was seconded by Mr. McSweeney and voted 5-0-0.

**VIII. Hearing:**



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**MOTION:** Ms. Welch made a motion to open the hearing on the sale of tobacco violation. The motion was seconded by Mr. McSweeney and voted 5-0-0. On a roll call vote: Mr. McSweeney voted Yes, Ms. Sheehan voted Yes, Ms. Damore voted Yes, Ms. Welch voted Yes, and Dr. Weiner voted Yes.

***Burlington Citgo, 161 Bedford St.- Sale of Tobacco Violation***

Nizar Abdallah, owner of Burlington Citgo, appeared before the Board.

Ms. Johnson stated that a contracted inspector for the Board of Health conducted a tobacco compliance inspection on May 1, 2023, and a package of Marlboro cigarettes was sold to a person under the age of 21 during that inspection. The regulation – Burlington Board of Health Regulations Restricting the Sale of Tobacco and Vape Products, Section 4(1) Tobacco Sales to Person under 21 Years Old. This section of the regulation incorporates MGL Ch. 270, Section 6 and 105 CMR 665, therefore the following penalties apply: since this is a first violation, a fine of \$1,000 dollars (already issued by BOH staff) and suspension of the Tobacco Product Sales Permit for 3 consecutive business days.

Following testimony, the question before the Board of Health is whether a sale to a person under the age of 21 occurred. If the Board determines that a sale has occurred, they should determine the date to begin the permit suspension of 3 consecutive business days. In addition, the permit holder should be notified that, according to Section 14(7) of the regulations, all tobacco products shall be removed from the establishment upon suspension of the permit. Failure to remove all tobacco products shall constitute a separate violation.

Ms. Johnson reminded Mr. Abdallah that all tobacco products have to be removed completely off the site (not, for example, in a trash bag or in a back room of the store).

Dr. Weiner asked if there was a violation. Mr. Abdallah replied yes.

Ms. Johnson recommended the suspension date/time – starting Thursday, May 25, 2023 and ending at the close of business on Saturday, May 27, 2023. Tobacco products may be sold on or after Sunday, May 28, 2023.

Mr. Abdallah stated that it was a mistake and that he'll retrain his colleague.

**MOTION:** Ms. Welch made a motion to close the hearing on the sale of tobacco violation. The motion was seconded by Ms. Sheehan and voted 5-0-0. On a roll call vote: Mr. McSweeney voted Yes, Ms. Sheehan voted Yes, Ms. Damore voted Yes, Ms. Welch voted Yes, and Dr. Weiner voted Yes.

**MOTION:** Ms. Welch made a motion to affirm the penalty: Sale of Tobacco Violation, 161 Bedford St. – Burlington Citgo. The motion was seconded by Mr. McSweeney and voted 5-0-0.



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***Binsky Premium Cigars, 214 Cambridge St. - Sale of Tobacco Violation***

Smiral Patel, owner, and Mitesh Patel, co-owner, appeared before the Board.

**MOTION:** Ms. Sheehan made a motion to open the hearing on the sale of tobacco violation. The motion was seconded by Ms. Damore and voted 5-0-0. On a roll call vote: Mr. McSweeney voted Yes, Ms. Sheehan voted Yes, Ms. Damore voted Yes, Ms. Welch voted Yes, and Dr. Weiner voted Yes.

Ms. Johnson stated that on the same day, May 1, a person under the age of 21 was sold a package of cigarillos. This is a first violation and a fine of \$1,000 has already been issued by the Board of Health staff as well as suspension of the tobacco product permit for three consecutive business days. My recommendation is also to start the three-day suspension on Thursday May 25, 2023.

Ms. Johnson asked that, since you operate a retail store, would you be closing the store or would you open the store and sell other items. Mr. Patel replied that they plan on closing the store. Ms. Johnson then informed the Board that they would be allowed to re-open on Sunday, May 28, 2023.

Mr. Patel stated that we will retrain everybody, and this will never happen again.

**MOTION:** Ms. Welch made a motion to close the hearing on the sale of tobacco violation. The motion was seconded by Ms. Sheehan and voted 5-0-0. On a roll call vote: Mr. McSweeney voted Yes, Ms. Sheehan voted Yes, Ms. Damore voted Yes, Ms. Welch voted Yes, and Dr. Weiner voted Yes.

**MOTION:** Ms. Sheehan made a motion to affirm the penalty: Sale of Tobacco Violation, 214 Cambridge St – Binsky Premium Cigars. The motion was seconded by Ms. Damore and voted 5-0-0.

**XIX. Discussion:**

***Board of Health Public Participation Policy***

Ms. Welch stated that citizens' time is for someone to come in and have a right to articulate their opinions / ideas without interference or retaliation from the government, not to have a time constraint.

Dr. Weiner read an excerpt from the Board Of Health Meeting Public Participation Policy: "individuals and/or entities are permitted to speak shall be in the sole discretion of the Chair or his/her designee; provided, however, that the Chair shall, to the best of his/her ability, ensure that each individual and/or entity who is permitted to speak is allotted an equal amount of time in which to do so."

Ms. Sheehan elaborated by stating that if we set a time limit, you have to remember that any time a citizen comes forward they would get equal amount of extended time if you so choose to let that person extend beyond the limit.



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Ms. Welch stated that I want to keep citizens' time exactly as it is because I want to feel comfortable as a resident myself to go in front of any other government board and feel comfortable that I can speak freely. Mr. McSweeney responded by stating that because of the latest ruling, it puts all boards in an awkward position. I do think as a board that we should make some changes that support the fact that we can have control over not the people or what they're saying, rather control over the agenda and over the Board of Health matters. I think if we don't, we're at risk of somebody coming in and controlling the meeting that has nothing to do with Board of Health matters.

**MOTION:** Ms. Welch made a motion to keep citizens' time exactly as it and make no changes. No other Board of Health Board Member seconded the motion. (failed)

Ms. Sheehan shared a comment made by Ms. Damore at the last subcommittee meeting that at any time, if things do get out of hand, anyone of us has the right to stop the meeting and so, therefore, there is a bit of protection to an unruly citizens' time getting out of hand.

Ms. Welch stated that there are some residents that how they deliver / process information a tough five minutes isn't enough time to articulate, so are we making any accommodations for that. Ms. Lumenello replied that if someone expressed beforehand that they have a difficult time articulating their thoughts / opinions for five minutes, the Chair could then decide to allow 15 minutes (for example) for that citizen. However, that would mean that every other citizen at that meeting would also be allotted the same time limit (i.e., 15 minutes instead of five).

**MOTION:** Mr. McSweeney made a motion to approve the recommendation by subcommittee to adopt the Board of Health Public Participation Policy changes which includes five minutes of discussion. The motion was seconded by Ms. Sheehan and voted 4-1-0.

**X. Staff Reports:**

***Environmental Engineer***

Ms. Mathis presented her report.

- Household Hazardous Waste Event – Saturday, June 3, 2023 Fox Hill Elementary (252 Fox Hill Road)

Mr. McSweeney inquired about situation with Brixmor. Ms. Lumenello replied that we will send them an appearance letter for the June Board of Health Meeting.

Ms. Welch asked about the investigation on Middlesex Turnpike involving hydraulic oil release. Ms. Mathis replied that a truck heading southbound between 4th and 3rd Avenues. Hydraulic oil was released, and cars kept driving through it, thus dragging it further out. The town sent the DPW to sand the roadway to prevent



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accidents, and the responsible party took over from there and brought in a street cleaner to pick up the sand. The incident was recorded.

**MOTION:** Ms. Welch made a motion to approve the Environmental Engineer's report. The motion was seconded by Ms. Sheehan and voted 5-0-0.

***Health Agent***

Ms. Johnson presented her report.

- Participated at Health Fair – Food Safety
  - Gave away food thermometers and magnets (final cook times of different food items) that were bought using the grant
- Conducting pool inspections with Ms. Hardy
- Reviewed Keeping of Animals applications

Ms. Welch asked about the outdoor seating situation with dogs at food establishments. Ms. Johnson replied that pets are not allowed on the premises of a food establishment, so you have to ask for variance. Boston has begun issuing variances and we've had a few people contact our office and so you may see some come before the board at a future meeting asking for a variance to allow dogs and outdoor seating.

**MOTION:** Mr. McSweeney made a motion to approve the Health Agent's report. The motion was seconded by Ms. Damore and voted 5-0-0.

***Associate Director of Public Health***

Mr. Greene presented his report.

- Resurrecting the Matter of Balance Classes
  - Hoping to get those scheduled on Tuesday mornings / early afternoons from September – October

Ms. Welch asked how many attendees were there at the Health Fair. Mr. Greene replied up to 250 in attendance.

**MOTION:** Ms. Welch made a motion to approve the Associate Director of Public Health's report. The motion was seconded by Ms. Sheehan and voted 5-0-0.

***Director of Public Health***

Ms. Lumenello presented her report.



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- Public Health Excellence Grant (FY 24) – receiving an additional \$145,000 for a total of \$445,000 for next FY.
  - For next FY, I would like to get the people established so that they know what’s happening in the different communities, attend different meetings in the three communities, make contacts, etc.

Dr. Weiner asked if the epidemiologist, nurse, and outreach workers are going to be in on a regular schedule. Ms. Lumenello replied that I’ve asked them to keep their schedules regular, although they might not be in Burlington because they might be at a meeting in Wilmington or Lexington.

**MOTION:** Mr. McSweeney made a motion to approve the Director of Public Health’s report (includes Associate Health Inspector’s report). The motion was seconded by Ms. Welch and voted 5-0-0.

**XI. Adjourn:**

**MOTION:** Ms. Damore made a motion to adjourn the Board of Health meeting at 8:11 PM. The motion was seconded by Ms. Sheehan and voted 5-0-0.

*Respectfully Submitted by Eric Bergeron,  
Recording Clerk*





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**DOCUMENTS REVIEWED AT MEETING – TUESDAY, MAY 23, 2023**

**I. Open Meeting/Pledge of Allegiance/Agenda**

**II. Approval of Minutes:** None

**III. Citizen's Time:** None

**IV. Chairman's Report:** None

**V. Subcommittee Reports:** May 10, 2023

**VI. Variance:**

***Corporate Chefs at 25 Mall Rd. – unattended food establishment***

5/23/23 M. Johnson Variance Request: Unattended Food Establishment; 5/16/23 A. Landry memo; Equipment Purchase Order; Compliance Logs; Signage

**VII. Permit:**

***4 Marjorie Road - Keeping of Animals (hens)***

5/23/23 M. Johnson Permit Request: Keeping of Animals; 5/5/23 M. Johnson appearance letter; 5/23/23 Chicken Coop Proposal Sketches & Information – 4 Marjorie Road; 5/5/23 M. Johnson memo

**VIII. Hearing:**

***Burlington Citgo, 161 Bedford St.- Sale of Tobacco Violation***

5/23/23 M. Johnson Hearing: Burlington Citgo, 161 Bedford St.- Sale of Tobacco Violation; 5/3/23 M. Johnson Correction/Cease and Desist Order; 5/3/23 M. Johnson appearance letter

***Binsky Premium Cigars, 214 Cambridge St. - Sale of Tobacco Violation***

5/23/23 M. Johnson Hearing: Binsky Premium Cigars, 214 Cambridge St.; 5/3/23 M. Johnson Correction/Cease and Desist Order; 5/3/23 M. Johnson appearance letter

**XIX. Discussion:**

***Board of Health Public Participation Policy***

5/23/23 Board Of Health Meeting Public Participation Policy; Public Comment At School Committee Meetings



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**VII. Staff Reports:** Environmental Engineer's Report, Health Agent's Report, Associate Director of Public Health's Report and Director of Public Health's Report (Includes Associate Health Inspector report)

**VIII. Adjourn:** None