

**Weber-Morgan Board of Health
Minutes of Meeting
January 22, 2024**

The Weber-Morgan Board of Health held its regular meeting on January 22, 2024, in the Health Department Annex conference room at 455 23rd Street. The meeting was called to order at 4:00 pm. With Chair Ali Martinez presiding.

BOARD MEMBERS PRESENT:

Ali Martinez	Lee Schussman – Virtual
Cheryle Allen	Bonnie Wahlen – Virtual
Angela Choberka	Jason Boren - Virtual
Leonard Call	

BOARD MEMBERS ABSENT:

Kevin Eastman	Dr. Ken Johnson
Dr. Andy Jensen	Dr. Frank Brown
Jared Andersen	Sharon Bolos

STAFF MEMBERS PRESENT:

Brian Cowan	Amy Carter	Zach Huescher
Michela Harris	Scott Braeden	Summer Jacobson
Bryce Sherwood	Jarelyn Cox	Lori Buttars
Lekelsi Talbot	Amanda Jones	
Heidi Niedfeldt	Nicole Blanch	

OTHERS PRESENT:

Brandan Quinney	Jason Rydalch	Trinity Jordan
Christopher Crockett	Warren Braegger	

Welcome and Introductions- Ali Martinez

Ali Martinez calls the meeting to order at 4:00 p.m. and welcomes those in attendance.

Approval of Board of Health Minutes of November 27, 2023 Motion Passes

A **MOTION** is made by **Cheryle Allen** and **SECONDED** by **Bonnie Wahlen** to approve the minutes as written. Roll call vote is taken and all were in favor. The **MOTION** passes unanimously.

November’s Tobacco Appeal Discussion/ Final Action Motion Passes

Board discusses appeal hearings for three tobacco retailers in the area Midland Market, Cloud Nine, and Vapor Vault. Hearing officer George Garwood made reductions to civil penalties for some parties but did not directly inform the retailers of the Board of Health’s authority to reduce suspension time or monetary penalties. Language in transcripts and documents shared between health department staff and

aggrieved parties did not explicitly state that the Board of Health had the authority to reduce suspension time or penalties. **Brian Cowan** explains to the board that the transcripts do not imply the Board of Health can decrease the penalty. **Dr. Lee Schussman** suggests including a statement in the appeal process to clarify the Board's authority. The Board of Health has varying authority to review Health Department decisions, depending on the statute. **Brandan Quinney** suggests the Board could provide provisions for future appeals based on the circumstance. **Ali Martinez** appreciates the role of staff in ensuring the Board's role is clear and understandable for the public and permit requesters. **Christopher Crockett** asks for the statute that gives the Board of Health authority to review decisions, and **Brandan Quinney** provides the relevant Utah Code Annotated 26A-1-121 (2)(a). **Christopher Crockett** suggests that the Board could go into a closed session to deliberate and discuss the permit appeal and provide reasons for their decision in a written decision to be signed by the Board. **Leonard Call** clarifies the appeal process and role of the Board. **Dr. Lee Schussman** seeks clarification on the board's second role, specifically in a quasi-judicial capacity. **Christopher Crockett** explains that the term "quasi-judicial" refers to due process implications and the possibility of a closed session. A **MOTION** is made by **Leonard Call** and **SECONDED** by **Dr. Lee Schussman** to deny the tobacco retailer appeals for Midland Market, Cloud Nine, and Vapor Vault. Roll call vote is taken and all were in favor. The **MOTION** passes.

Tobacco Appeal One-Stop

Motion Passes

Bryce Sherwood informs the Board that the application for the One Stop Smoke Shop permit was denied due to a non-transferable permit. A Retail Tobacco Specialty Business (RTSB) permit was denied to Jed Creek LLC, due to its proximity to residential homes. Trinity Jordan, attorney for Jed Creek LLC, discusses the denial of a specialty tobacco license for One Stop Smoke Shop despite his efforts to renew and improve the business. Trinity Jordan stated that Tom Breen, retired Ogden police officer and storeowner, shares his experience with the store and the challenges he faced in obtaining the specialty tobacco license. Weber-Morgan Health Department denied the specialty tobacco license due to location restrictions. Trinity Jordan explains the grandfather provision in tobacco legislation, which exempts certain tobacco shops from location restrictions if they meet certain criteria, including having a retail tobacco license before 2018 and being compliant with local laws. **Trinity Jordan** highlights the importance of maintaining the grandfather provision to avoid location restrictions near schools, as schools are the only location restriction that lawmakers were unwilling to carve out. Trinity Jordan argues that a new license is not a renewal and therefore falls outside of the restrictions on grandfathered licenses. **Trinity Jordan** continues stating Weber-Morgan Health Department interprets the statute differently, leading to legal arguments over vagueness. He emphasizes the importance of legislative intent in interpreting the law, particularly regarding keeping tobacco products away from minors. The grandfather clause and new code 26B-7-508(3) as seen as inconsistent with the legislative intent, as they allow businesses to continue operating without proper permits and restrictions. Trinity argues for specialty tobacco licenses, citing compliance with Davis and Salt Lake County interpretations. **Brandan Quinney** explains to the board the correct steps the Weber-Morgan Health Department has been taking in administering the law as it is written. Under code section, 26B-7-508(3) the permit is not transferable, and based

on the changes submitted in the application the tobacco retailer may not renew the permit and shall apply for a new permit. **Brandan Quinney** continues with Utah Code Section 10-8-41.6(4) regarding location Restrictions of zoning in residential areas and how to maintain Grandfather Provision which the retailer is not eligible due to section 26B-7-503, Zoning ordinances, and the requirements of the license described in Subsection(7)(a)(i). **Brandan Quinney** states that speaking with other health departments and having the same executive decision and enforcing certain laws or not does not affect the validity of the law. The statute's language is plain and simple and can be applied directly as presented. If another jurisdiction chooses to not enforce the provision it does not create an exemption for the whole state and their interpretation does not mean the Weber-Morgan Health Department has to fall under the same regime. We as the Health Department, are committed to enforcing laws as they are written and if the legislature wishes to change how the law applies it would be the legislative branch's role, not the Health Department.

Executive Closed Session

Motion Passes

Closed Session for Quasi-Judicial Review

A **MOTION** is made by **Dr. Lee Schussman** and **SECONDED** by **Cheryle Allen** to move into an Executive Closed session to discuss the appeal for a tobacco permit. Roll call was taken. All vote Aye. The **MOTION** passes unanimously.

Reconvene Regular Meeting

Motion Passes

A **MOTION** is made by **Angela Choberka** and **SECONDED** by **Cheryle Allen** to reconvene. All vote Aye. The **MOTION** is passed unanimously. A **MOTION** is made by **Dr. Lee Schussman** and **SECONDED** by **Angela Choberka** to deny the application for tobacco retailer appeal. A roll call vote was taken and all were in favor. The **MOTION** passes.

Director's Report

Information Only

Brian Cowan encourages the board members to save the date for the UALBOH annual conference at Thanksgiving Point and extends the invite to all BOH members to the grand opening of the new Seager Clinic. Brian Continues to inform the board of Lekelsi Talbot new role on the Seager Clinic Board.

Chair Report- Ali Martinez

Information Only

No chair report but also encourages all board members to attend the UALBOH Conference.

The meeting adjourns at 5:38 pm.