

Meeting Minutes of the Chelsea Board of Health
July 25, 2023

Attendance: Names of members and participants

Board members, guests & City of Chelsea staff were introduced.

Board Members:

- Ola Bayode
- Joshua Merson
- Allen Jackson
- Dr. Dean Xerras

City of Chelsea Staff:

- Flor Amaya, Director of Public Health
- Paula McHatton, Public Health Nurse
- Strephon Treadway, Asst. City Solicitor

Members of the Public:

- Bonnie Carrol, Six City Tobacco Control Initiative
- Robert Collett, Cape Cod Regional Tobacco Control Program
- Chris Banthim, Public Health Advocacy Institute
- Lisa Goodnight, Massachusetts Municipal Association
- Sean Kelly, Freeman, Mathis & Gary
- Cheryl Sbarra, Massachusetts Association of Health Boards
- From RJ Reynolds Tobacco Company: Marc Woloszyn, Dr. Mike Davis
- From the Public Health Advocacy Institute: Chris Banthin, Marc Gottlieb
- From Jones Day, representing RJ Reynolds Tobacco Company: Patrick Haney, Katrina Caseldine, Christopher Morrison
- From RAI Services Company: James Pisciotta, Michael Davis
- From 7-11: Phil Best, Michael Hogan,
- From Vega Market: Francisco Vega, Renny Vega

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Approval of the June 2023 Minutes

The minutes of the June 2023 meeting were approved.

Public Hearing re: Tobacco Violations

Strephon Treadway, Asst. City Solicitor suggested that this portion of the meeting be separated into two sections: 1) where the retailers stipulate that on 7/6/2023 that they had for sale non-menthol cigarettes, and 2) whether those products are flavored per the MA tobacco regulations.

Vega Market and 7-11 stipulated that they did have these products for sale on the date in question.

Through translation provided by Flor Amaya, representatives from Vega Market stated that they did not receive a notification that these products were not allowed. Bonnie Carroll, Director of the Six City Tobacco Control Initiative, stated that a letter went out to local retailers in May stating that the products in question were flavored per the regulations, and that they had until 6/15/2023 to remove the products from their shelves. Vega Market representatives denied receiving the letter, and Carroll confirmed that that the letters were sent via US Mail.

Sean Kelly, representing 7-11, argued that the non-menthol cigarettes do not violate the MA tobacco regulations, adding that their position is based on a letter the store received from RJ Reynolds Tobacco Company (RJR).

Vega Market, through translation, stated that they did not receive notification that the products were not allowed, noting that he bought them in Chelsea. They were under the impression that that because they were marked non-menthol, they were ok to sell.

Next, the Board heard public comments:

- Robert Collett, Cape Cod Regional Tobacco Control Program stated that he purchased a package of these non-menthol products and gave them to two experienced menthol smokers to use and asked them for feedback. The smokers reported that the products gave a similar flavor and sensation to what one experiences when smoking a menthol cigarette. He added that retailers told him that their customers were reporting similar opinions and has found that letters from tobacco retailers often state that the products contain no flavor but are often inaccurate based on smokers' experiences smelling and tasting the product.
- Cheryl Sbarra, Massachusetts Association of Health Boards gave a broad presentation focusing on several main points:
 - Whether or not a product is flavored is a matter of common experience and common sense. The MA tobacco regulations state that a product has an aroma or flavor that has a distinguishing taste other than tobacco.
 - The Flavor and Extract Manufacturers Association, of which RJR is a member, defines flavor as "a substances taste, smell and any physical traits perceived in the mouth." RJR's argument that these products mimic the taste of menthol, but are not flavored according to the regulation, is disingenuous, she added.
 - RJR's study noted that menthol provides a cooling sensation that masks the irritation and harshness of tobacco. This cooling sensation makes menthol cigarettes easier to smoke for new smokers, which is why the legislature banned menthol as a flavor. Sbarra then circulated a pack of non-menthol cigarettes for the Board to examine.

Dr. Xerras asked whether these products contained menthol. Sbarra responded that they contain a chemical known as WS-3 which mimics the taste/smell of menthol. She continued that smokers interpret these products as menthol cigarettes, and that current advertising for these products are similar to campaigns targeting African Americans, the Latinx, LGBTQ communities. In conclusion Sbarra circulated binders to the Board with additional documentation supporting her position.

- Patrick Haney, Jones Day thanked the Board for the opportunity to speak. His presentation focused on several points:
 - The Board has received inaccurate information, which he sought to correct. He suggested that if the Board applied the science and facts to the law, then the Board will conclude that non-menthol cigarettes are not flavored according to MA law.
 - RJR introduced 3 non-menthol products in MA in February 2023. These products contain a chemical additive, WS-3, and do not contain any menthol. WS-3 is a chemical compound, generally recognized as safe. The compound imparts a cooling sensation to the user. It cannot provide a taste or aroma, he continued.
 - The FDA has authorized each of these products for sale, and have a Substantial Equivalence Exemption, which can be granted when a tobacco product is modified by adding/deleting an additive. On the exemption, the products' characterizing flavor is listed as "None."

- The tobacco violation notices the retailers received accuse the retailers of selling a flavored tobacco product – a product that produces a characterizing flavor (a distinguishable taste/aroma other than that of tobacco detectable before or during consumption.) The definition adds that "...no tobacco product shall be determined to have characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product. The statute defines "distinguishable" as "perceivable by either smell or taste."
 - He added that: these products are not flavored because the addition of WS-3 is not enough of a reason, according to the statute, to determine that these products are flavored; and the statutory test focuses on taste and aroma, and WS-3 can impart neither. WS-3 is not perceptible as either taste or smell as a matter of science.
 - Continuing, he added that RJR did not add a chemical to mimic the taste of menthol, and menthol smokers may have experienced a cooling sensation from these products, but that it was impossible that they experienced the taste of menthol. He critiqued interviews Cheryl Sbarra gave calling the products "menthol products" and the anecdotal nature of having smokers taste the products.
 - Returning to the MA tobacco regulations, Haney reminded the Board that the regulations prohibit products that impart a distinguishable taste or aroma, not a cooling sensation in the absence of a taste or aroma. He suggested that if the Board looks at the facts and the law as written, it will conclude that these products are not flavored according to the MA tobacco regulations.
- Dr. Mike Davis, RJR is a Master Scientist at RJR. In speaking on the science behind the non-menthol cigarettes he stated:
 - These products were introduced earlier this year. They are ordinary tobacco products which contain WS-3, which imparts a cooling sensation, but not an aroma. WS-3 added to unflavored tobacco imparts a cooling sensation. It is impossible for tobacco smokers to taste menthol in these products. The smokers would have tasted and smelled ordinary tobacco but received a cooling sensation.
 - WS-3 was developed by Wilkinson Sword to design a chemical compound to provide a cooling sensation after shaving without the irritation of menthol. The compound has been used in a wide variety of consumer products over the last 50 years.
 - WS-3 does not contain a distinct taste or aroma. The body's ability to recognize taste, odor and sensation are regulated by chemical reactions to different chemical compounds. Chemical compounds bind to taste receptors in the mouth, which send signals to the brain to identify the flavor being experienced. Compounds that bind to odor receptors work in a similar way. The brain can combine multiple sensations to identify the food/liquid being consumed. Any one can be activated without activating the other two.
 - WS-3 activates the cooling sensation receptors, but not the receptors for taste or odor receptors.

Ola Bayode suggested that thermal receptors do impact taste, pointing out that hot foods taste different than cold foods. Dr. Davis said that experience is based on thermodynamics. He continued that as you heat food, the flavor molecules become more volatile and concentrated, and the flavor and aroma become more intense.

Dr. Xerras clarified that taste is a sensation, and that the science around what is known about WS-3 could change in the future. He questioned whether during inhalation WS-3 could be picked up the olfactory nerves. Dr. Davis explained that less volatile compounds like WS-3 stay

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in the particulate phase, and if it were to enter the vapor phase it wouldn't necessarily bind to odor receptors because the receptors are very particular about what compounds they react to. WS-3 doesn't have the correct receptors to bind to odor receptors in humans.

- Lisa Goodnight, Massachusetts Municipal Association first learned about these products in February when a retailer approached a local tobacco control officer in their town. Her organization studied the product advertising and found it to be targeted to menthol users. She argued that the targeted nature of the advertising suggested that they were marketing these products as menthol products. She added that the average person would understand these products as menthol flavored and reported on testing she and friends/colleagues had done. She and her colleagues reported experiencing a cooling sensation, similar to menthol. She noted that the statute doesn't require the Board to be scientists, and that allows the Board to consider how an average person would understand these products.
- Marc Gottlieb, Public Health Advocacy Institute found a webpage on the internet describing WS-3 being sold under the name menthol carboxamide. On the webpage, the compound is described as "...white to light yellow crystalline solid, with an odor of light menthol." It is used a flavor ingredient effective in combination with mints and oil to increase flavor, he added.

Additional Comments:

- Patrick Haney, Jones Day reiterated his previous point that the products state that they are non-menthol products. He added that he has provided scientific material documenting what WS-3 is, and that the Board should consider the science and the law as written.
- Cheryl Sbarra, Massachusetts Association of Health Boards stated that the law as written does not define taste. She added that the legislature's intent was to prohibit the sale of all products that mimic menthol cigarettes, and suggested that to menthol smokers, these products taste like menthol cigarettes.
- Chris Banthin, Public Health Advocacy Institute highlighted internal tobacco industry documents that refer to WS-3 as having a "minty character" and taste. One document from Philip Morris described four key menthol taste effects, of which one as cooling. Another from RJR from 2000 described WS-3 as providing "...intense lingering cooling..." and "...the cooling sensation slowly, steadily grows to a lingering cooling mouth feel with a slightly camphorous and minty character..."

Patrick Haney requested time to review the documents Cheryl Sbarra presented. The Board voted unanimously to delay further deliberation on and enforcement of the MA tobacco regulation with regard to these products until the September meeting.

Strephon Treadway noted that if retailers continue to sell these products in the interim, they may be at risk of further fines, and they do not need to serve the suspension outlined in the violation letter. The Board will send new letters out at the conclusion of the deliberations at the September meeting. Vega Market suggested that the Board send other ways of communicating with retailers, such as email.

Cheryl Sbarra requested a copy of the RJR letter, and Patrick Haney will review the documents presented by Cheryl Sbarra. Treadway outlined that responses to the binder submitted by the MA Association of Health Boards and the letter from Jones Day should be submitted to him and Flor Amaya electronically by 9/12/2023.

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Communicable Diseases Report, Paula McHatton, Public Health Nurse

Last month there were (7) Enteric diseases and (1) case of Mumps.

The mumps case was in a person that was fully vaccinated who developed swelling in left their cheek. The family was visiting from India. The niece from India was confirmed positive for mumps 2 weeks prior to traveling to U.S. The patient did not share food or drinks with family members.

Influenza

- In the month of June, there were (5) reported cases (last month, (2) reported cases) COVID.
- The positivity rate as of last Friday (7/21/23) was 5.08%.
- Currently Omnicron XxB is the most prevalent variant but WHO (World Health Organization) identified a sub-variant of XxB as EG.5 that is rising and prevalent around the world and in the U.S.

Tuberculosis

- Currently, (7) active cases

One case was in a patient from New Hampshire who was treated at the Shattuck. He left the facility before completing treatment. State police searched for him at the address in Chelsea and has yet to be found.

Updates

- On July 17th, FDA approved a new drug called Beyfortus to prevent RSV in babies and Toddlers.

Public Health Initiatives – Updates, Flor Amaya, Director of Public Health

- Lead exposure: There was a presentation on lead concerns in the City. Amaya met with the DPH Commissioner to advocate for mobile testing. The discussion was not fruitful, and the parties are now strategizing on how to orchestrate pop-up lead poisoning. DPH data shows that most cases of lead exposure in Chelsea have been household exposures, and many have occurred away from the Tobin Bridge.
- Childhood immunizations: The City has been working with the State and local agencies to provide immunizations to new arrivals.

New Business/Discussion

The City is working to support recent Haitian immigrants who have arrived in the US

The draft body art regulations will be delayed until current work demands return to normal

Next Meeting

The next meeting will be held on 9/26/2023.

The meeting adjourned at 7:19 pm.


Allen Jackson, Clerk

9/26/2023
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