

## Newburyport Board of Health Meeting

February 21, 2019

Date of Approval: 3/21/2019

### Attendees

Dr. Sam Merabi, Board Member  
Dr. Robert Slocum, Board Member  
Frank Giacalone, Health Director  
Molly Ettenborough, Energy Recycle and Sustainability  
Sharon Kishida, Municipal Assistance Coordinator  
Ron Beauregard, Healthy Communities Tobacco Control Program  
Patricia McAlarney, Note Taker

**Call to Order:** called meeting called to order at 7:08 p.m.

**Approval of Minutes:** Motion to approve the Minutes of the Board of Health meeting on January 17, 2019 was made by Dr. Slocum and seconded by Dr. Merabi Votes to approve: 2; votes opposed - none. Minutes of the January 17, 2019 meeting were approved as submitted.

### Tobacco Control Update

- **Tobacco Definition** - Mr. Beauregard confirmed that the Newburyport Tobacco Regulations does include a definition of tobacco that includes vape products, which would cover products such as cannibidiol (CBD) or hemp. He also explained that any establishment that plans to sell vape products (including CBD or hemp products) must obtain a Permit to Sell Tobacco. The Tobacco Regulations also prohibit the issuance of any 'new' tobacco permits in the City. Mr. Beauregard made reference to the following sections of the Tobacco Regulations:
  - **4.2.024 TOBACCO PRODUCT:** *Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product.*
  - **4.2.008 ELECTRONIC CIGARETTE:** *Any electronic device composed of a mouthpiece, heating element, battery and /or electronic circuits that provides vapor of liquids, regardless of nicotine content, or relies on vaporization of any solid or liquid substance, regardless of nicotine content. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.*

Mr. Beauregard informed the Board that he does not recommend changing the definition of tobacco products because the current definition would also apply to any products that may become available in the future that are similar to CBD, hemp, or other vaping products.

Mr. Beauregard explained that each city's regulations rely upon interpretation by each Board of Health which is why the Ipswich Board of Health did not require Cape Ann Botanicals to obtain a Tobacco Sales Permit to sell CBD and hemp vaping products even though their Tobacco Regulations are similar to Newburyport's.

The Board requested that Mr. Beauregard confer with his colleagues, Cheryl Sbarra and DJ Wilson, concerning the interpretation of definition of tobacco to question whether they recommend a change to the wording of the regulation to further define the inclusion of other vaping products (including but not limited to CBD and hemp) and that Mr. Beauregard draft a letter for the Board to send to Cape Ann Botanicals to explain why the Board is not allowing them to sell vape products at their Newburyport location.

- Seven Eleven was fined by the Food and Drug Administration after a 'sting operation' found them selling tobacco products to a minor on multiple occasions in 2013, 2015 and 2019. Mr. Beauregard explained that when the FDA conducts a compliance check and the establishment sells tobacco product to a minor, the FDA assesses it as two violations (#1 - allowing a minor to buy tobacco and #2 - failure to view proper identification for proof of the age of the buyer.) The FDA issued a '30 Day No Sales Order', an administrative complaint and fine of \$17,115. A copy of the administrative complaint was provided to the Board. Mr. Beauregard noted that FDA violations are not counted toward the local tobacco violations.
- Age 19 Provision for Purchase of Tobacco – Mr. Beauregard informed the Board that at this point in time Newburyport's Tobacco Regulations are stronger than the state law. The minimum age to purchase tobacco in Newburyport remains at age 19; and although the state also sets a minimum age of 19, the state allows those who had reached the age of 18 as of December 30, 2018 to be "grandfathered" (and allowed to purchase tobacco products.) The grandfathering clause for these individuals will continue until the individual reaches the age of 21. The state law requires that unless a city changed the minimum purchase age to 21 on or before December 31, 2018, the City must maintain their 'current' (i.e. in effect as of December 2018) regulation. Therefore, the minimum age for the purchase of tobacco in Newburyport will remain at 19 until December 31, 2020 when it will increase to 21 in accordance with state law.

Motion made by Dr. Slocum to amend the agenda to review Body Art Regulations prior to Solid Waste and Recycling, seconded by Dr. Merabi. So moved.

**Body Art Regulation:** Amanda Valle requested that the Board approve her to be permitted by as a Body Art Practitioner performing micropigmentation at Interlocks medical spa in Newburyport. Ms. Valle explained that she is currently permitted in Salisbury to perform micropigmentation (eye liner, lips and areola), brow microblading and tattooing. Dr. Sarkesian is one of the owners of the Interlock's medical spa which operates under his medical license, although he is not routinely on site. Director Giacalone explained that the Body Art Regulations state that any micropigmentation done as part of a medical procedure would fall under the license of the medical doctor and would be exempt from the Regulations; however, in Ms. Valle's situation she would usually be performing micropigmentation when there was no medical doctor onsite. Ms. Valle explained that the majority of body art that she would be performing would be areola re-creation following breast reconstruction. Dr. Sarkesian is a plastic surgeon and therefore it is extremely unlikely that he would have been the medical doctor that had performed the breast surgery/reconstruction. Ms. Valle stated that micropigmentation following breast surgery cannot be performed until at least six months following surgery, and that although some nurses working directly with breast surgeons may perform areola re-creation

using micropigmentation, they are not as experienced in the technique as a well-trained body art practitioner.

The Board agreed to consider Ms. Valle's request to be permitted as a Body Art Practitioner but requested that she provide for their review letters from physicians that have referred their patients to her for micropigmentation following breast reconstruction.

## **Solid Waste & Recycling :**

**Mandatory Hauler / Generator Regulations** - Sharon Kishida, Municipal Assistance Coordinator, Northeast District 2: Ms. Kishida has been contracted by the City through a Technical Assistance Grant from the State to research adoption of private hauler regulations and mandatory recycling for all generators. It was determined by the Board that tonight's discussion would center primarily on the Solid Waste Task Force Recommendations and that discussion concerning private hauler regulations that would provide parallel service (trash and recycling), and mandatory recycling by all generators would be tabled until a future meeting.

**Solid Waste Task Force Update:** The Board was given a copy of the Solid Waste Task Force's recommendations that was provided today to the members of City Council in preparation for the Council meeting on February 25, 2019.

Ms. Ettenborough explained that the Task Force's recommendations call for a Pay As You Throw (PAYT) program with the first bag given free of charge (each week) to all residences that qualify for municipal solid waste pick-up. No dumpsters would be picked up as part of the municipal solid waste contract. Businesses (in the downtown area only) would qualify for solid waste pick-up. Any residential complex that has nine or more units will not qualify for municipal solid waste pick up unless the units have street frontage that would allow for curbside pick up in front of the units (which is important for identifying which trash belongs to which units.) Using this protocol, there are very few complexes that would not qualify for pick-up . Examples of larger complexes that would not receive municipal solid waste pick up because they do not have frontage and that require dumpsters include: Maritime Landing, Woodman Way, and the Newport Condominiums on Low Street.

The Board questioned why the City is offering solid waste pick up for any businesses (i.e. downtown) and were told that it is because enforcement would be nearly impossible because of the challenge in differentiating residential versus business/commercial solid waste in a mixed use area. It was also noted that due to sanitation issues and space constraints, the City does not want dumpsters in the downtown area.

The Waste Reduction Task Force considered the following options before making their recommendation for to City Council:

1. **Status Quo Option:** The collection program would remain the same, however, the program cost would rise considerably due to an increase of 23% for collection and hauling of trash, and 100% increase for recycling (which will now cost \$70 - \$90/ton)
2. **Annual Trash Fee Option:** This option does not have any component that would provide incentive for residents to reduce the amount of trash they generate. People could throw away whatever amount they choose.
3. **Full Pay As You Throw Option:** (Residents would pay for every bag)

4. **Hybrid Pay As You Throw** - First bag (weekly) is given to each residence for free. (Some residences will not need to purchase any additional bags if they only generate one bag of trash.)

At a prior meeting the Board was presented with three options for solid waste programs. Dr. Merabi recounted that at that time the Board did not have ample time to discuss all possible options and ultimately opted to not support any of the three options presented by the Waste Reduction Task Force, understanding that the Task Force would be presenting their recommendations to the City Council for the Council's consideration. Dr. Merabi stated that the specific concerns he had raised based on experiences from communities, such as Worcester, that utilize the PAYT program were not adequately addressed and/or were dismissed in the Recommendations and Frequently Asked Questions provided by the Waste Reduction Task Force. While the problems associated with PAYT may have been investigated by the Task Force, there was no independent research or NIH grant results provided that support the Task Forces' findings and recommendations. Dr. Merabi stated that the city of Worcester has devastating sanitation issues resulting from their trash program and that a citywide survey conducted in Worcester in 2018 showed that residents identified "sanitation" as the number one problem in the city. He stated that Newburyport needs to have strategies and advocacy groups in place in advance to address potential problems, such as difficulties encountered by persons of lower income or with disabilities.

The Board stated that as a Board of Health their focus is on proper trash removal and sanitation; which takes priority over cost and efforts to reduce trash production for environmental purposes. They stated that when the process started, the goal was to develop a fair and equitable program that would provide trash removal services to all residents of Newburyport. The Board expressed that every residence for which taxes are paid should have municipal solid waste pick up (including occupants of rental units in condominiums) regardless of whether waste is picked up curbside or from dumpsters. The two main concerns cited by the Board were: sanitation issues related to not providing solid waste collection from all residences; and sanitation issues resulting from challenges faced by persons of lower income or with disabilities in affording or acquiring the approved bags. Dr. Merabi suggested that the Board of Health should submit a separate memo/recommendation to City Council that outlines the public health concerns as well as the added costs that may be incurred from a PAYT program.

Ms. Ettenborough explained to the Board that the Task Force's recommendations were never intended to be the final plan. The recommendations provided a framework of a PAYT program for the City Council to review and to make a determination as to whether or not to proceed with the PAYT concept; a concept that would be refined prior to finalization of the plan to fully address issues such as affordability and accessibility for individuals with disabilities and/or lower incomes. Ms. Ettenborough stated that ensuring that the final solid waste plan includes ample accommodation for impoverished and disabled persons has always been a high priority for her.

Sharon Kishida noted that there are many differences between Worcester and Newburyport and also between the two city's solid waste programs. Worcester's PAYT trash program only provides for municipal trash pickup from residences with four (or possibly six units.) The Waste Reduction Task Force's recommendations are far more liberal than programs offered in most communities in that it provides for municipal solid waste collection for complexes with up to nine residential units.

Ms. Ettenborough explained that it was never expected that the City would be able to offer municipal solid waste collection to every residence in the City and that the PAYT program will not (and was not ever expected to) cover the entire cost of collection which is budgeted for 1.5

million dollars annually. The Waste Reduction Task Force's goal was to recommend a program that would service as much of the City's residential population as possible in a fair and equitable manner, to provide incentives for residents to reduce the amount of trash generated, to increase the amount of material recycled and diverted, and to address environmental issues associated with lack of landfill space, incinerators that are at capacity and the shipping of solid waste to out of state locations. Prior to creation of the Waste Reduction Task Force, the Recycling Division had implemented several programs and strategies to address issues related to waste reduction such as: multi-year organics recycling pilot program, zero waste program, bi-annual Repair Cafes, expansive list of acceptable recyclables at the Recycle Center, providing extended hours for recycle drop off, conducting two Recycle IQ programs and providing increased education and enforcement on every level.

Dr. Merabi offered to participate in future meetings of the Trash Reduction Task Force to share his concerns and ideas. He will also provide a written list of his concerns and some suggested programs that will include the following:

**Concerns related to PAYT programs:**

- Massive amounts of litter
- Illegal dumping
- Disabled persons trying to obtain bags'
- Affording bags for lower income people with lower income
- People trying to get around the cost of disposal (may dump trash into public barrels)
- Corruption
- For profit company

**Suggestions to augment a solid waste collection programs:**

- Amnesty week for house clean-out in/spring cleaning. Residents would be allowed to throw out anything on this specific week
- Flea market
- Exemptions for elderly or for persons with disabilities.

**Food Establishment - Director Giacalone**

The Health Department conducted two training seminars for food establishments to introduce changes brought about by the state's adoption of the 2013 Federal Food Code. One of the changes is that establishments that sell only pre-packaged foods that do not require temperature or time controls for food safety will no longer be permitted by the local Health Department. Approximately twelve establishments will fall in this category.

Two food establishments have recently opened in the City: Mama Dukes and The Modern Butcher. Lolo Poke will be opening in April.

**Animal Control Services - Director Giacalone:** Kayla Provencher has been hired an Assistant Animal Control Officer (ACO). She currently works as an On-Call ACO for Salisbury and Amesbury. She is well qualified for the position and the Health Department will be paying for her to attend the Animal Control Academy this spring. Ms. Provencher has already informed the Health Department that she plans to apply for the full-time ACO position when Scott Purdie retires in October 2019.

**Motion to adjourn** made by Dr. Slocum; seconded by Dr. Merabi. Votes to approve - 2; votes to oppose - 0. Meeting adjourned at 9:18 pm.