

**Newburyport Board of Health Meeting
August 15, 2019**

Date of Approval of Minutes: 9/19/2019

Attendees

Dr. Robin Blair, Chairperson
Dr. Sam Merabi, Board Member
Dr. Rob Slocum, Board Member
Frank Giacalone, Health Director
Patricia McAlarney, Note Taker

Call to Order: Dr. Blair called the meeting called to order at 7:11 p.m.

Approval of Minutes: Motion to approve the minutes from the June 20, 2019 meeting was made by Dr Merabi. Minutes of the June 20, 2019 meeting were approved as submitted.

Evergreen Commons:

Attorney, Lisa Mead, of Mead, Talerman & Costa, LLC who is representing the contractor for the Evergreen Commons in a quest to procure municipal services for pick-up of the resident's solid waste. Attorney Mead stated that there are health and environmental benefits to having 'controlled' trash pick-up rather than having the Association utilize private trash hauling services. She also noted that Evergreen Commons includes 23 acres of open space that includes a playground and biking path that will be open to the public. Although the road is private, Attorney Mead stated that the road through Evergreen Common is in 'better shape' than many of the roads that already receive municipal trash pick-up.

Dr. Merabi stated that Evergreen Commons appears to be a well-organized community which would be more capable of coordinating trash services than perhaps some older associations. Attorney Mead stated that when the application for Evergreen was submitted to the Planning Board there was no solid waste disposal plan included because it is not required. Evergreen Commons is now petitioning the City (City Council and the Health Department) for trash pick-up service from the private road, or acceptance of the road as a public way (which would automatically qualify Evergreen Commons for city trash pick-up. Ms. Mead also noted that the Homeowners Association will be responsible for landscaping of the residential grounds and the open space in accordance with the deed restrictions set in place, monitored and enforced by the Conservation Commission.

The Board explained that in order to better forecast the costs associated with the proposed Pay-As-You-Throw (PAYT) program, a moratorium upon adding any new large (more than eight units) complexes for city trash pick-up was enacted approximately one year ago. The Board will review the cost of trash removal for the period of the moratorium to more accurately determine the costs and quantity of trash on a per household basis. The data will then be used to extrapolate the costs of a PAYT program. Attorney Mead suggested that perhaps Evergreen could pay the City to be included in the Pay-As-You-Throw program. The Board concluded that the moratorium remains in effect and therefore, no new additions of large complexes (including Evergreen) will be added for City trash pick-up at this time.

Solid Waste Task Force - Molly Ettenborough

The PAYT Proposal remains in the City Council Public Safety Committee. On July 11, 2019 the Task Force met with the Committee and the Committee of the Whole. During the session questions from both Councilors and the public were answered. Another session will likely be held in September; after which the Committee will review and edit the proposal and make a decision on the program. Ms. Ettenborough informed the Board that a video of the July 11 meeting and copies of minutes of all of the Task Force meetings can be found on the City Website on the Recycling page under Solid Waste Task Force. The Board requested that at their next meeting Ms. Ettenborough instruct the Board on how the data concerning trash tonnage, service and transportation is calculated and how the information can be used to project the anticipated costs of the PAYT program. Ms. Ettenborough will inform the Board of the date of the next meeting of the Task Force.

Board of Health Regulations - Director Giacalone

Director Giacalone reminded the Board that a draft Board of Health Solid Waste Regulation was distributed to them previously. They were encouraged to review the draft and note any suggested changes since they will be asked to pass a Solid Waste Regulation once City Council has passed the Solid Waste Reduction Ordinance. Director Giacalone stated that the Board of Health's Regulations should be aligned with the Waste Reduction Ordinance and will include detailed instructions on how the trash program will be implemented (i.e. limitations on which roads or complexes qualify for city trash collection.)

Cape Ann Botanicals –

Carla Villa, Kurt Kalker and Spencer Kalker from Cape Ann Botanicals attended the meeting to ask the Board for permission to continue to sell (at least until January 15, 2020) prepackaged food products which contain CBD. Cape Ann Botanicals currently sells pre-packaged gum, honey and chocolates that contain CBD. Ms. Villa provided the Board with a copy of a June 12, 2019 ruling by the Massachusetts Department of Agricultural Resources (MDAR) that states that, based upon a decision by the Food & Drug Association (FDA), edible products containing CBD are prohibited from retail sale in Massachusetts. She also provided a copy of a June 13, 2019 release by the Mass. Department of Public Health which prohibits the retail sale of foods that have CBD as an added ingredient. Ms. Villa explained that she has been informed by state legislators that these advisory statements are precursors to legislation that is currently being considered and that by January 2020 laws regulating the retail sale of foods containing CBD are expected to be finalized. Cape Ann Botanicals is asking the Board to follow the actions of the Ipswich Board of Health which agreed to allow Cape Ann Botanicals to sell the food products containing CBD until January 15, 2020 as a means of allowing them to deplete their current supply so they are not left with product that can't be sold if the laws pass prohibiting the sale of food product with CBD.

Ms. Villa stated that they are aware of other retail establishments, some of which are in Newburyport, that are selling prepackaged foods containing CBD (often of a lesser quality than theirs); she stated that these retailers, as well as online suppliers, put Cape Ann Botanicals at a merchandising disadvantage. Many customers specifically request the edible CBD products because it is easier for them to consume due to age or disease related impairments. The Board repeatedly stressed that in their opinion medications should not be added to foods and especially not to candy. They also noted that CBD has been touted to have medicinal or healing qualities and, is now an active ingredient in FDA-approved drugs. Cape Ann Botanicals stated that they have not been able to find high quality CBD products that are in an easily ingestible form, which is why they want to continue to offer foods/gummies containing CBD.

Dr. Merabi made a motion, that was seconded by Dr. Slocum, to restrict the sale of food products containing CBD to only those products with warning labels stating that the product must be kept away from children; the products may only be sold to individuals who are 18 years of age or older, and only the current supply of product may be sold. As of January 15, 2020 no food products containing CBD may be offered for sale. Votes in favor: 3; Votes opposed: 0. Motion passed.

Cape Ann Botanicals – Vaping Products

Director Giacalone reminded the Board that at a previous meeting at which Cape Ann Botanicals was present it was discussed and confirmed that Newburyport's Tobacco Regulations include under the definition of 'tobacco products' ***any product that is vaped regardless of nicotine content***. Because there are no new Tobacco Permits available for issue in Newburyport, Cape Ann Botanicals was not issued a permit to sell tobacco. Director Giacalone informed the Board that Ms. Villa had come to the Health Department and informed the Office Manager that despite the vaping products were being sold. At an inspection conducted by Director Giacalone and Tobacco Control Director, Ron Beauregard, vaping products were observed on the shelf for sale to the public. The Board asked Ms. Villa stated that at the January meeting she misunderstood and thought that these vaping products 'fell into a loophole.' Director Giacalone refuted this misunderstanding and reminded Ms. Villa that he had repeated during the meeting and in phone conversations that they were not allowed to sell vaping products. Ms. Villa stated that when she reviewed the February 15 Board meeting minutes it indicated that a letter was to be sent to Cape Ann Botanicals confirming that the products could not be sold; however, such a letter was never received. She confirmed that Cape Ann Botanicals had stated that 'we said that we were not going to sell them.' They continued to sell the vaping products because they felt that it placed an unnecessary burden to make their patients who have Parkinson Disease (for example) go to their Ipswich store to purchase the vaping products. The Board stated vaping products are a public health travesty and that all vaping products lead to the same four-fold risk of someone smoking tobacco. The Chief Executive Officer of Cape Ann Botanicals, Spencer Kalker, stated that it was his decision to sell the vaping product after the Board meeting at which it was determined that vaping products cannot be sold without a tobacco permit because he was waiting for the confirmation letter to arrive; and he told his staff that they were to sell the vaping product and would remove it from the shelf when the letter directing them not to sell the product was received.

The Board instructed Director Giacalone to send a letter to Cape Ann Botanicals that will include a formal warning for Failure to Obey a Board of Health Order by selling vaping products after being advised that vaping products are covered under the Newburyport Tobacco Regulations, and that sale of vaping products require a Permit to Sell Tobacco, which Cape Ann Botanicals does not have. Any subsequent offenses will include citations and fines.

The Board asked Director Giacalone to research and report back as to how other Boards of Health have banned vaping all together in their communities.

Director Giacalone introduced to the Board Tom Carbone Director of Public Health for Andover. Mr. Carbone explained that the Andover Board of Health is also dealing with issues related to CBD in food products, hemp and vaping. The tobacco regulations for Andover are identical to Newburyport and he appreciated the opportunity to hear how Newburyport applied the definitions from the regulations to vaping products. Andover is hoping to have regulations specific to vaping ready for vote the Board to vote on at their September meeting.

Public Nurse Update - Director Giacalone

- Nourish the North Shore has completed a series of eight cooking classes that were well received.
- There were no concerning reports of communicable diseases this past month.
- Public Health Nurse, Pam Palombo, is pregnant with her second child and is due in March.

Animal Control - Director Giacalone

- We have taken possession of the replacement Animal Control Vehicle which is provided by the town of West Newbury. Newburyport is responsible for gas and vehicle maintenance; West Newbury covers insurance and registration costs.
- The full-time Animal Control Officer, Scott Purdie is planning to retire in October. The Assistant Animal Control Officer who has graduated from the Animal Control Academy, plans to apply for the full time position.

Food Establishments

- A Hawaiian Poke establishment is expected to take over the previous D'Angelo location at the Storey Ave Plaza
- Courtyard Restaurant is under new ownership and will re-open as Pomodori in October. Complete renovations are already underway.

Meeting Adjourned at 8:47 pm.