

**Newburyport Board of Health
November 9, 2017**

Date of Approval: 1/18/2018

Attendees

Dr. Robin Blair, Chairman of the Board
Dr. Sam Merabi, Board Member
Dr. Robert Slocum, Board Member
Frank Giacalone, Health Director
Ron Beauregard, Tobacco Coalition
Cheryl Sbarra
Dianne Knight
Patricia McAlarney, Note Taker

Call to Order: Dr. Blair called the meeting to order at 7:13 p.m.

Approval of Minutes: Motion to approve the Minutes of the Board of Health meeting on September 21, 2017 was made by Dr. Sam Merabi; seconded by Dr. Blair. Votes to approve: 2; votes opposed - none. Minutes were approved as submitted.

Energy, Recycle and Sustainability – Frank Giacalone

Director Giacalone reported that the bid process has begun for the new solid waste contract. Proposals from three contractors, Mello, JRM, and Waste Management, will be considered for either a five or ten year contract. The three municipalities that are participating in the bid process are Newburyport, Merrimac and Amesbury. Newburyport and Amesbury have decided not to include a requirement for a Performance Bond in order to keep costs down.

Director Giacalone also noted that the Energy, Recycle and Sustainability Division has been heavily involved in the installation of the new LED street lights in the City.

Public Health Nurse:

Director Giacalone reported that the Public Health Nurse, Pamela Palombo, is currently on Family Medical Leave and will be working intermittently in the office and working part time from home completing MIIS Vaccine reports and MAVEN follow up reports on infectious diseases. The nurses who ran the Flu Clinics during Ms. Palombo's leave did a good job and the six Flu Clinics held so far have gone smoothly. The City will offer two additional Flu Clinics on November 16 and 30.

Amendments to Tobacco Sales Regulations

Director Giacalone noted that copies of the following had been provided to Board Members: Proposed Changes to the Tobacco Regulations, Notice sent to tobacco retailers outlining the proposed changes, two letters from the school department that were submitted to the Health Department regarding the proposed changes to tobacco regulations.

Director Giacalone summarized the proposed changes by reading the following from the notice sent to tobacco retailers:

1. Prohibit the sale of any flavored tobacco (including electronic cigarettes and vaping juices), except in retail tobacco stores where food sales are prohibited and no one under the age of 19 is permitted entry.
2. Require packages of two or more cigars be priced at \$5.00 or more and maintain the current requirement that all single cigars be priced at \$2.50 or more.

3. Prohibit tobacco sales at any new store locations within 500 feet of an elementary or secondary school.
4. Expand the definition of “tobacco product” to include vaping juices, electronic cigarettes and any other similar products that rely on vaporization or aerosolization, regardless of nicotine content.

Public Comment – Dr. Blair opened the floor to public comment:

Dennis Lane, Executive Director for the Coalition for Responsible Retailing, President of the New England Franchise Owners of Massachusetts and Former President of the Franchise Owners for the entire country. He is a retailer and has been in the business for 43 years. Mr. Lane stated that retailers take sales to minors very seriously and work diligently to keep tobacco away from minors. He pointed out that the penalty of losing a tobacco retail license is a serious and significant threat since tobacco sales may account for as much as 40% of a retailer’s sales. His concern regarding banning flavors and raising the cost of cigars is that small retailers face challenging times in this financial environment; they need to be profitable in order to stay in business. NE Journal of Medicine wrote an article on September 14, 2017 that stated that ‘nicotine needs to be included in any anti-smoking program for individuals attempting to overcome nicotine addiction.’ He stated that people need to be offered a harm reduction strategy that is a reasonable alternative to smoking. He also noted that in New York when the price for nicotine products was raised, there was a significant increase in black market sales. He stated that the Board should look closely at the possible negative consequences of the proposed changes to the regulations and urged the Board to offer safer alternatives rather than impose bans for those individuals who are looking to stop smoking.

Dr. Blair noted that the proposed ban is only on flavored tobacco since it is considered to be more appealing to children than non-flavored tobacco; the proposal is not a ban on tobacco in general.

Cheryl Sbarra - Director of Policy and Law for Mass Association of Health Boards. She thanked the Board for considering the proposed changes to the tobacco regulations. She stated that she agreed with statements by the Chairman that the ban is only on flavored tobacco specifically because of its allure for children. With regard to the impact of black market sales she noted that Massachusetts legislature created an Illicit Tax Force Commission made up of Phillip Morris and other tobacco companies and representatives from public health, police and the department of revenue. The Commission reported that they had not witnessed the same issues of black market sales that have occurred in New York. Convenience Store and Petroleum (CSP) Association held a Total Nicotine Conference at which the plenary speaker was the chief analytics company which does research and market on convenience store sales. One point that was presented at the conference was that ‘seven out of ten smokers go directly to the counter to purchase tobacco products not adding other products to their baskets’ – This phenomenon was titled a Mission Oriented purpose by the Commission. Ms. Sbarra also noted that the FDA banned flavored cigarettes in 2009 with the rationale that the flavored cigarettes are attractive to children. She noted that the proposal being considered at today’s meeting follows and extends this same line of rational.

Mike Parent, Resident of 4 Lunt Street, Newburyport and Principal of Newburyport High School - Mr. Parent stated that the schools have been struggling with the issue of vaping for the past two and a half years. The most recent Youth Risk Behavior Survey showed that 17.6 percent of high school students tried smoking a cigarette in contrast to the 46.5 percent who had tried an electronic vaping device. The wrappings and flavors (cotton candy, tutti fruity etc.) are targeted to young people. Vaping oils can contain chemicals and nicotine and many have been found to contain formaldehyde, as well. Students

report it is easy to obtain vaping supplies both online and from older students. Mr. Parent stated that he believes that the new regulations that are being considered tonight can have a positive effect in keeping these devices out of the hands of students under the age of 19. He encouraged the Board to pass these new regulations with the goal of eliminating another way that tobacco companies are trying to gain back their market share of the products. The anti-cigarette campaign has been phenomenally successful and Mr. Parent is hopeful that the Board to give the anti-vaping campaign the same chance of success.

Ron Beauregard – Director of Northeast Tobacco Control - Mr. Beauregard reminded the audience that the proposed changes are a venue issue, not a ban or prohibition. This restriction has been successfully implemented in many other communities. Adults that want to consume these flavored products may still obtain them at tobacco retail stores. The vision of this regulation is that these products are for adult consumption only, and therefore, the regulation would make the products unavailable to anyone under the age of 19.

Dianne Knight - Tobacco Free Community Partnership, funded program of Department of Public Health. Ms. Knight thanked the Board considering adopting these regulations to protect our youth from large tobacco companies and their “flavored cheap treats.” She provided the Board with copies of brochures that she uses to educate parents. Ms. Knight noted that parents are often shocked by the number of students who are experimenting with these products and that there are over 8000 flavors of vape products. She encourages parents to talk to kids about vaping and to know that the products are harmful, and that nicotine is addictive and damaging to the developing brain. The 2016 Surgeon General’s report was provided to the Board. This issue is considered to be an emerging public health threat and she encouraged the Board to join the other 202 municipalities of the Commonwealth that have already restricted flavored tobacco products at retail establishments. Ms. Knight submitted to the Board a letter from the Tobacco Free Mass for their review. She also showed the Board an example of E-Juice which was packaged as a box of popcorn.

Charles Mobardi - Owner of Newburyport One Stop - Mr. Mobardi stated that as a responsible community member he tries hard to abide by all laws. At his store he sells electronic cigarettes but does not sell vapes. He feels that vaping is a big issue and it’s going to get worse. He noted that it is very difficult to compete as a small business in Massachusetts and that if he does not have tobacco to sell he feels that he would lose many daily customers who purchase other items. He holds his employees accountable for following the laws of verifying the age of customers purchasing tobacco products. However, unlike the state of New Hampshire, the laws of the Commonwealth hold the store owner responsible if tobacco is sold to a minor (not the actual employee that made the sale); therefore, employees may not be as diligent in checking the age of patrons. If the company and employees are following all of the laws and regulations, they should not be ‘penalized’ by banning products etc.

Mr. Mobardi said that the price of cigarettes is so much lower in NH that he mainly sells single packages of cigarettes (because a carton of cigarettes is too expensive in Mass.) He is particularly harmed by Newburyport's close proximity to New Hampshire. He is not as concerned about the increase in the price of cigars since he believes that kids are purchasing them to smoke something else; so regardless of price, the kids will buy them. The sale of electronic cigarettes is slowly increasing and is countered by a decrease in the sale of cigarettes. He stated that he disagrees with Cheryl Sbarra’s comment about the impact of losing the customer that comes to his store to buy a single pack of cigarettes each day, because he feels that the impact would be significant to his business.

Cathy Riccio - School Nurse for Newburyport Public Schools - She is very concerned with the health of our youth. The children are interpreting that if the flavored tobacco products etc. are readily available then they must be ‘safe.’ She fully supports the passing of the proposed changes to the regulations.

Dennis Lane – Mr. Lane stated that he feels that laws should be the same for all age-restricted products such as alcohol, tobacco and, soon, marijuana. While it is unlawful for minors to purchase or possess

alcohol, the same is not true of tobacco. Statistics show that 16 - 17% of minors have used tobacco while over 34% have used alcohol. In liquor stores there are bins of nips that are flavored as cherry, birthday cake, etc. People who buy tobacco products will very often also purchase scratch tickets, newspapers, milk and other items at the same time. As long as the retailers are doing their jobs and are responsibly "IDing" kids, there should not be a ban on the products. He also noted that if an individual comes to a retail store and wants to purchase an electronic cigarette to assist him in quitting smoking and the retailer must direct him to the retail Tobacco Store, they will simply keep smoking.

Board of Health considered each proposed change and subsequently voted, specifically considering the following:

- The first proposed change should not present an issue since the City already has in effect a cap that prohibits an increase in the number of tobacco permits issued.
- The presentation of the flavored tobacco packaging does seem to appeal to children and the misconception that flavored tobacco is 'not as bad' as tobacco are not acceptable public health practice. The marketing of the flavor is a public health problem because it expands the epidemic of nicotine addiction and these products could be gateways.
- The cigar pricing issue seems to be closing a 'loop hole' issue that the City's original regulations had not addressed since there was no price limit for multiple unit packages containing four or more cigars.

Voting on Proposed Changes to Tobacco Regulations:

Motion made by Sam Merabi to accept the four proposed changes as presented. The motion was seconded by Dr. Blair. In favor - 2; opposed - 0

The proposed changes to the tobacco regulations will become effective on January 1, 2018.

Food Establishments – Director Giacalone

- West Row – This new establishment at Market Square is now open for business.
- Mead Brewery – This establishment is currently undergoing site plan review and is expected to open shortly. The process has been challenging in that the owner of the business has consistently changed the proposed menu and operation of the establishment (which affects the types of equipment required – grease traps, warewash equipment, etc.)

Massachusetts Health Officers Association Conference (MHOA) - Director Giacalone will be attending the MHOA Conference next week. Coverage during his absence will be provided by Jack Morris, Amesbury; Chris Webb (Food Inspector), and Patti McAlarney (Office Manager).

North Andover Waste Water Treatment Plant – Director Giacalone - As a result of power outage and lack of adequate back up generators at North Andover's Waste Water Treatment Plant, approximately 30,000 gallons of raw sewerage was released into the Merrimac River. North Andover did not notify any communities located downstream from the release. Director Giacalone was advised that by the time Newburyport was notified the sewerage had been diluted by the flow of the river.

Meeting adjourned at 8:25 pm.

The next meeting will be January 18, 2018