

Town of Concord
Board of Health

Minutes of the Meeting
Tuesday, February 11, 2019

PRESENT: Raymond Considine, Chairman
Alma Healey, RN
Mark Haddad, Esq.
Jill Block
Dr. Deborah Greene

Susan G. Rask, Public Health Director
Karen M. Byrne, Administrative Assistant

OTHERS: Alice Kaufman, BOS Liaison; Cheryl Sbarra, Senior staff Attorney and Director of Tobacco Cessation and Prevention Program Disease Prevention Program for the Massachusetts Association of Health Boards (MAHB)

The Chair opened the meeting at 7:30 a.m.

1. DISCUSSION – Tobacco/Nicotine Delivery Product Regulations

Chairman Ray Considine began the discussion recapping the Board of Health’s long standing commitment to implementing preventative public health measures to reduce the use of tobacco and other nicotine-containing products (e-cigarettes) in the Town’s youth population over the years. However, in recent years, the Chair advised that recent studies and data have indicated an explosion in the use of e-cigarettes and that was extremely concerning to him. Expressing frustration, Mr. Considine stated that a product initially marketed as a device to wean smokers off of nicotine had in his opinion become “an unintentional/intentional” (depending upon whom you spoke) way to enticement for young people to start “vaping”.

At this point, Chairman Considine introduced Cheryl Sbarra, Senior Staff Attorney and Director of the Tobacco Cessation and Prevention Program and Chronic Disease Prevention Program for the Massachusetts Association of Health Boards (MAHB) to provide input on what other communities have explored or enacted as it relates to e-cigarettes and vaping. Ms. Sbarra said that several communities had begun the process of enacting regulations restricting e-cigarettes due to what most public health entities believe directly correlates to use of vape products and youth. Communities such as Ashland and Needham are moving towards more prohibitive regulations restricting e-cigarettes, but the City of Somerville and its Board of Health had set a precedent in December 2018 by voting on a new regulation to restrict the sale of e-cigarette systems and menthol cigarettes to adult-only tobacco retail stores. The Somerville regulation is slated to go into effect on April 1, 2019 however, according to Ms. Sbarra all parties interested in this regulation were prepared and waiting for the lawsuit to be filed by the law firm Fletcher Tilton representing the Coalition for Responsible Retailing.

The Chair noted that he had spoken to Board members individually to convey his personal thoughts on the potential of amending existing Board of Health Regulations for tobacco and nicotine to include restricting the sale of electronic nicotine delivery devices (systems) to adult only tobacco retail stores. Chairman Considine stated that he would like to see the Board of Health take a proactive role in this public health epidemic and follow suit with Somerville however not knowing other members opinions wanted to open the matter up for discussion.

Consensus was that the Concord Board of Health pursues similar regulations. Dr. Deb Greene expressed concern about adolescent use/abuse of many substances but in her opinion “vaping” was an immediate concern. According to Dr. Greene and other sources, this is a particular issue at the high school (in bathrooms and classes). She said it is definitely interfering with student’s learning and in her opinion should not be ignored.

Board member Jill Block concurred adding that “vaping” was being reported on as a trend but she personally viewed it as an addictive behavior and should be viewed as such. Both Alma Healey and Mark Haddad agreed.

The Board discussed at length the type of steps it could take in moving forward with a potential regulation and Mr. Considine inquired what type of pushback Ms. Sbarra envisioned if Concord prohibited e-cigarettes, vaping/nicotine devices and menthol cigarettes to adult stores only. Ms. Sbarra advised that local Boards of Health had a wide regulatory purview and could draft regulations as prohibitive as it chose to make it but there would likely be consequences (i.e. a lawsuit) if it were too stringent in the retailer’s opinions – if Concord chose to include menthol, Ms. Sbarra said that the Town would inevitably be sued. If the Board decided to move forward, Ms. Sbarra advised that she had drafted the template for other cities and towns and would be available to assist in drafting Concord’s regulation.

PHD Rask said that it was rather disheartening to see the statistics of nearly twenty years of tobacco control and prevention (smoking rates down to 7% in adolescents) offset by 20% increase in vaping products.

Select Board liaison Alice Kaufman asked Board members what they felt was the value of going forward with regulations limiting sales of these products to an adult-only-establishment. She wondered if this might create a scenario to encourage a type of business not currently operating in Concord to do so; she asked if the Board would have to create a new type of license for “Adult Only Retail Establishments” and/or would the current tobacco sales establishments somehow be grandfathered and/or given first option. She was a bit perplexed considering that the existing establishments were already restricted to certain products and customers had to be 21 years of age to purchase.

Chairman Considine noted there was a possibility of unintended consequences with the potential arrival of interested tobacconist applicants but his initial thoughts were there were currently 14 licensed tobacco/nicotine sales establishments that could theoretically convert to “adult only retail sales” but did not want that to deter the Board from moving forward if that was its desire.

Consensus was to move forward. Board members Dr. Greene and Jill Block felt the change was important but that continuous education was paramount in curbing the use in adolescents and should go hand and hand. Both expressed hope that leadership in the School Department would support any measure the Board put forth. Alma Healy and Mark Haddad both stated they were in favor of moving forward with a regulation with the caveat it did not open the Town up to many unnecessary legal battles. In their opinion, money would be better spent on educational efforts as opposed to court battles.

Board members also felt that any effort to move forward with this type of regulation would require serious consideration on its part to perhaps limit the amount of licenses issued (similar to liquor licensing). Following additional brainstorming, Mark Haddad suggested considering capping the total number of tobacco/nicotine sales permits to a total of 10 per year (grandfathering in the current – not renewing (4) four when ownership changed or store closed). Board members liked that idea and also discussed what it felt was a reasonable amount of licenses for “Adult Only Retail Tobacco/Nicotine Establishments” and felt two (2) was reasonable. Board members concurred.

The Board discussed whether to consider banning menthol cigarettes as well as menthol vaping products in the revised regulation. Chairman Considine stated he was ambivalent on the issue recognizing that the likelihood of

legal action would increase significantly if that were the case. His personal opinion was that they should be banned but felt it would be the “flash point” for the Tobacco Industry to sue the Board.

Mark Haddad was uncomfortable taking away something the licensees had (i.e., menthol cigarettes) and felt that by doing so would make it more likely that someone would apply to open an adult only tobacco retail store; it was his opinion that the more the Town pushed the more viable it would become to open a store where the product could be purchased. Alma Healy agreed. As it stands now tobacco products can only be purchased by an adult and if the goal was to further deter adolescents then restricting the vaping products made more sense to her.

Dr. Greene moved to invite Cheryl Sbarra to draft Proposed Regulations to restrict e-cigarette products and devices to being sold in Adult Only (21) Retail Tobacco Establishments in the Town of Concord. Jill Block seconded it. All VOTED in favor to APPROVE.

Board members circled back to the discussion on limiting the number of tobacco licenses issued in the Town of Concord to ten (10) as well as limiting any new Retail Tobacco Establishment licenses to a maximum of two; all existing tobacco licenses would be grandfathered but if an establishment goes out of business and/or gives up their license it would be retired permanently.

Mark Haddad moved to invite Cheryl Sbarra to draft a second Proposed Regulation to limit the number of Tobacco Retailers to ten (10) within the Town of Concord with the proviso that all current Tobacco Retailers Establishments (14) as of the effective date of the new regulation would be grandfathered until such time the establishment closed and/or chose not to renew its license until the Town reaches the maximum number of ten (10). Dr. Greene seconded it. All VOTED in favor to APPROVE.

Lastly, the Board agreed that the number of Adult Only Retail Establishment Licenses issued within the Town of Concord should be limited to two (2). Mark Haddad reasoned that limiting it to one in his opinion was too restrictive and did not allow for fair competitive business practices. Board members concurred. Therefore, Mark Haddad moved to have Cheryl Sbarra draft a third (3rd) Proposed Regulation to limit the number of Adult Only Retail Tobacco/Vaping Establishments licenses to two (2) within the Town of Concord. Dr. Greene seconded it. All VOTED in favor to APPROVE.

2. CHAIRMAN & BOARD MEMBER REPORTS

Chair Report

Mr. Considine informed the Board he wanted to informally contact Select Board members to advise them on the Board of Health’s intention to move forward with proposed changes to the tobacco regulations. At this point, BOS Liaison Alice Kaufman interjected cautioning him against proceeding in that manner. She would report back as the Liaison what the Board of Health was considering but Ms. Kaufman said it would better serve the community as whole to make a presentation at an open Select Board meeting. Mr. Considine said it was not his intention to coerce individual members but thought an informal approach was best at the early stages. Ms. Kaufman disagreed and reiterated her position. She said that it would be appropriate to discuss it at the Chair Breakfast if Chairman Considine was so inclined. Board of Health members agreed that the Chair Breakfast was the appropriate venue to advise others on the direction the Board was going.

The Chair had no further reports other than a point of information noting that Governor Baker’s proposed FY20 budget included cutting tobacco control funding by \$100,000.

Board Member Reports

Jill Block was happy to report that Concord resident and bike safety enthusiast Richard Fahlander was the lead on “Concord Bike Fest” on May 18th; an event co-sponsored by Concord Recreation. She said that it would be

a daylong celebration promoting Bike Safety. Ms. Block was particularly excited about this event because Bike Safety was an important component of the Healthy Concord grant that she worked on as the lead with the Health Department several years ago. She said it was a fantastic opportunity to get “Healthy Concord” back into the public’s eye.

3. BOARD CALENDAR & MINUTES

Discussion of the December meeting minutes was postponed to the March meeting.

The Board discussed the upcoming meeting calendar. Board members Greene and Haddad had conflicts in April and Mr. Considine was unable to attend the May 22nd meeting. Administrative Assistant Karen Byrne would attempt to find alternate dates.

4. STAFF REPORT

PHD Rask advised that she was working collaboratively with the Health Directors from Carlisle and Bedford to apply for a CHNA15 Grant to create a community wide youth vaping prevention program. Final submittal was in April.

The meeting adjourned at approximately 9:30 a.m.

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Respectfully submitted by,

Karen M. O’Keefe-Byrne, Administrative Assistant
Concord Board of Health

Raymond Considine, Chairman

Dr. Deborah Greene

Alma Healey

Mark Haddad

Jill Block