

REGULAR MEETING OF THE BOARD OF HEALTH
November 10, 2014

A Regular Board of Health Meeting at the Town Hall was held on Monday, November 10, 2014 at 6:30 p.m. Board members present: Jeannine Lopes, Peter DeTerra and Barbara Acksen. Also present: Patricia Fowle, Health Agent.

Chairman Lopes called the meeting to order at 6:30 p.m. and asked for a motion to approve the minutes of the Regular Meeting of October 20, 2014. Motion to approve the minutes was made by Mr. DeTerra; seconded by Ms. Acksen. The vote was unanimous.

Chairman Lopes called for a motion to close the Regular Meeting and enter into a Public Hearing for the proposed amendments to the Board's 1) Regulation Prohibiting Smoking in Workplaces and Public Places and 2) Regulation Restricting the Sale of Tobacco Products. The motion was so made by Mr. DeTerra; seconded by Ms. Acksen. The vote was unanimous.

The Chairman stated the purpose of the hearing was to accept comments, and questions on the Board's proposed amendments to its Regulation Prohibiting Smoking in Workplaces and Public Places and its Regulation Restricting the Sale of Tobacco Products. All members of the audience signed into the hearing and the sign-in sheet is part of this record. Ms. Lopes asked if those present had had an opportunity to review the proposed amendments. The health agent first addressed the Regulation Prohibiting Smoking in Workplaces and Public Places stating this regulation is a combination of the Board's existing regulation on prohibiting smoking in municipal buildings and prohibiting smoking in workplaces. Adoption of the regulation would eliminate the need for the Board's municipal regulations. Effectively there would be no change to the requirements of the regulations. No questions were asked and no comments made on the proposed regulation.

Mr. Elias El-hachem, Fairhaven Valero , 130 Huttleston Avenue wished to speak on the Regulation Restricting the Sale of Tobacco Products. He stated he sells to only adults at his store and the proposed amendments especially regarding the ban of all flavored tobacco products including liquid nicotine would eliminate 70% of his profits and may put him out of business. He believes with better education of both the youth and their parents and heftier fines for those stores that do sell to youth would affect the same. He further stated that adults are using the e-cigarettes to quit and this is healthy. Removing the flavored tobaccos and nicotine will affect the quit rate.

Attorney Cheryl Sbarra of the Massachusetts Association of Health Boards addressed each of the Tobacco Sales amendments. The amendments do not prohibit the sale of e-cigarettes to adults. The FDA has found that flavored tobacco and flavored liquid nicotine such as cotton candy, chocolate, and the like are used more readily by youth thus capturing a new user audience. Written statements from the industry state that compliance rates locally are high but they neglect to state that both the number and types of compliance checks being performed have dramatically decreased in number. For a town such as Fairhaven which no longer has a funded tobacco program, the FDA checks are done strictly for Marlboro or Winston cigarettes and do not address new products such as liquid nicotine and flavored tobacco products where the new user rate is significantly high. The flavored tobacco products rank high in use by youth and those under age 18. Capping the number of retailers to its present number will not affect current permitted retailers. Handling spills and outdated liquid nicotine should effectively be treated as a hazardous material because that is exactly what DEP has codified the material to be. There is no distinguishing between closed and open containers of liquid nicotine because of the DEP

codification. The existing cigar pricing is clearly aimed at youth where one can purchase a single or double package of cigars for less than a candy bar or soft drink. The proposed amendment is the Board of Health's pricing strategy to defer youth from purchasing. In conclusion the 2014 surgeon general's report states that these are unreasonably dangerous products and how many other defective products are retailers actually allowed to sell? The proposed amendments do not prohibit the sale on any of these defective products but does place conditions upon their sale to protect youth from becoming users.

Mr. Gary Hathaway, Scuttlebutts, 407 Main Street asked that each of the amendments on the Regulation Restricting the Sale of Tobacco Products be reviewed item by item by the Board prior to his discussion. He stated the amendments would take bread off his table. He questioned the legality of setting the price of a single cigar and spoke of a court case that occurred in New Bedford in which the State lost. Ms. Sbarra stated they did lose on a technicality because the Commissioner did not follow the law. The amendments is not price fixing, rather it is pricing strategy to protect youth. There are 79 communities following this rationale and Boston has done so since 2009. Mr. Hathaway stated the compliance rate in Fairhaven is good and such measures are not necessary and will hurt business. A brief discussion on internet sales occurred.

Mr. El-hachem stated he is compliant and never sells to youth. All of these products come with many warnings and it is up to the parents and the individuals to educate themselves about the use. More signage and education is needed and raise the purchase age to 21. This will hurt all small businesses. E-cigarettes help people to quit smoking.

Ms. Aksen stated that a youth's brain is not totally developed until age 24. Youth can become addicted to nicotine before they have full use of their reasoning capacity. Prevention is the best way to stop addiction. It should be noted cessation signage does help.

Ms. Kathy Wilson, Tobacco Free Coalition, stated it is a fact that e-cigarettes do not act as a quitting aid. Mr. Hathaway took exception to the statement and Ms. Sbarra stated the truth is that the jury is still out on this matter. It is enough to know there are warning labels on these products.

Also noted were two written statements against the proposed amendments from Cumberland Farms and National Association of Tobacco Outlets. The statements are part of this record. There were no further comments.

Ms. Lopes asked the Board if they had any further comments or questions. Mr. DeTerra stated there is an increasing number of flavored products being used by school age children in Fairhaven schools. These matters are about public health and protecting the youth.

Ms. Aksen stated though she understands the financial issues, the Board must address public health issues.

Ms. Lopes stated she has had discussions with police officers who work in local schools and they comment flavored tobacco products are a big problem with youth.

There being no further comments Ms. Lopes asked for a motion to amend or adopt the proposed Regulation Prohibiting Smoking in Workplaces and Public Places.

Ms. Aksen made a motion to adopt the proposed amended Regulation Prohibiting Smoking in Workplaces and Public Places, thereby eliminating the Board's Municipal Workplace Regulation;

seconded by Mr. DeTerra. The vote was unanimous.

Ms. Lopes asked for a motion to amend or adopt the proposed Regulation Restricting the Sale of Tobacco Products. Ms. Acksen made a motion to adopt the proposed Regulation Restricting the Sale of Tobacco Products as written; Mr. DeTerra seconded. The vote was unanimous.

Ms. Lopes made a motion to have the effective date of the regulations January 1, 2015; Mr. DeTerra seconded. The vote was unanimous.

Ms. Lopes asked for a motion to close the public hearing and re-open the regular meeting of the Board of Health. Mr. DeTerra so motioned; Ms. Acksen seconded. The vote was unanimous and the regular meeting re-opened at 7:30 p.m.

Health Agent's report:

The Board was given a copy of the latest Ebola Virus Disease protocol for local Boards of Health as written by the Department of Public Health. Weekly teleconferences are continuing.

The remaining doses of flu vaccine are being given by the Community Nurse at the regular blood pressure clinics on Tuesdays, 2-3 pm at the town hall. This will continue until the vaccine is gone.

The Board was given a copy of the new Health Inspector's worksheet. Progress is being made in all of the stores and restaurants. The work is progressing well.

The Board received a copy of a letter from the New Bedford City Council asking for support in banning the synthetic drug "Cloud 9". The Board of Health is in full support of such but asked for more information on the class of products of which the letter spoke. It is noted that the he banning and enforcement of any of these substances is done by the Police Department.

Ms. Acksen brought before the Board a signatory page of a letter to the Selectmen regarding air monitoring and environmental testing along the Acushnet River through the PCB dredging and the construction of the CAD cell in the Acushnet River. The letter was incomplete and the health agent was directed to research the matter and report to the Board by the next meeting or sooner.

Both Mr. DeTerra and Ms. Acksen attended the MAHB certification program on November 1, 2014, and have received their certificates.

Invoices were signed.

There being no other business before the Board, motion to adjourn was made by Mr. DeTerra; seconded by Ms. Lopes. The vote was unanimous. The meeting adjourned at 8:00 p.m. The next meeting will be held on Monday, December 1, 2014 at 6:30 p.m. at the Town Hall.

Respectfully submitted,
Patricia Fowle, Health Agent