

Time being 7:00 p.m. **November 5, 2018** Paul Steeves opened the meeting of the Foxborough Board of Health, under the Open Meeting Laws of the State of Massachusetts. Paul Steeves, Chairman presiding, Eric Arvedon, Vice Chairman, Todd Whitehouse, Clerk, Pauline Zajdel, Health Director, and Diane Passafaro, Public Health Coordinator were present. Meeting took place in the McGinty Room inside Foxborough Public Safety Building at 8 Chestnut Street. Minutes were taken by Diane Passafaro.

Others present:

Rich Carrigg

Charles DiPompo

Alexandra Gomes

Dr. Lester Hartman

Michael Lindley

Dennis Naughton

Stephen Udden

Todd Whitehouse read the agenda of the Foxborough Board of Health November 5, 2018 meeting, aloud.

**7:00 p.m.**     ***Public Hearing: Discussion and a vote to amend the current Town of Foxborough tobacco regulations entitled: “Restricting the Sale of Tobacco Products”***

Todd Whitehouse read the public hearing notice that was published in the Foxboro Reporter on October 25, 2018. Materials relative to the public hearing included the draft tobacco regulations with proposed amendments. All documents were provided to the Board and were available for attendees. Cheryl Sbarra, Senior Staff Attorney with the Massachusetts Association of Health Boards and Marilyn Edge, Tobacco Consultant for the Town of Foxborough, were also present to assist with the explanation and interpretation of the changes.

Eric Arvedon informed the public that during previous Board of Health meetings the Board reviewed prospective amendments that could be incorporated into the Town’s current tobacco regulations. Following the Board’s decisions, Cheryl Sbarra developed the draft regulations based on each amendment requested. This public hearing was being held so that each amendment could be discussed and members of the public could speak on the changes proposed. After everyone had a chance to speak, the Board would then vote whether to accept the amendments or not.

Cheryl Sbarra briefly explained the three major changes to the regulations. These changes include:

1. Amending the definition of “tobacco products” to mirror the definition that is found in the State Law. This new definition incorporates and includes electronic cigarettes into the definition.

2. Restricting the sale of tobacco in health care institutions (Section N). This amendment will give the Foxborough Board of Health jurisdiction over health care institutions within the Town to ensure compliance with the restriction.
3. An increase in violation fines and replacing language associated with suspensions from “may” suspend to “shall” suspend.

Paul Steeves opened the room for comments.

A question related to the definition of tobacco product was asked, asking for clarification on the part of the definition that reads, “tobacco product includes any component or part of a tobacco product”. Ms. Sbarra assisted in interpreting the definition to the Retailer. Eric Arvedon added that the Board of Health is available at any time and encouraged the Retailer to come to them with any questions.

Opposition associated with the proposed fine increase was expressed by attendees in the room. Opposed comments included those of Charles DiPompo who stated, in summary, that he felt the proposed fines were minimal and provided the Board with his own personal fine and suspension recommendations. This document has been included as supplemental meeting materials. His fines included a \$1,000, \$3,500 and \$7,500 fine for the establishment’s first, second and third offense, respectively as well as a suspension of 21 and 50 days for the establishment’s second and third offense, respectively.

Cheryl Sbarra informed the Board that the current method of fining an establishment when found in non-compliance, as a non-criminal disposition, does not allow the Board of Health to issue a ticket higher than \$300. The Board may issue the establishment an Order, in which they would be allowed to issue a fine up to \$1,000.

Additional comments related to fines and suspensions included those of a current tobacco retailer, stating it is the suspensions that are most concerning for an Owner. If customers cannot purchase what they want, they will go elsewhere for their gasoline and other goods.

Comments from the public also included that fines should be significant and severe enough to ensure violations do not occur. In opposition to this comment, a tobacco retail owner commented that discipline works well when graduated and stated a gradual increase in fines is no less a deterrent than if it was otherwise.

Marilyn Edge interjected and explained that within the proposed amendments, the increase in fines was minimal, however, penalties for non-compliance was strengthened when the Board made the decision to change the suspension language from “may” to “shall”.

The discussion and comments from those present shifted and began to include those associated with flavored tobacco and the use of electronic cigarettes in underage children. Dr. Hartman voiced his concern and provided the Board with materials showing data to back up his opinion that flavored tobacco should be restricted. These documents have been included as supplemental meeting materials.

Comments continued relative to flavored tobacco that urged the Board to take another look at the regulation and suggested the Board may need further information to move forward with a flavor restriction. It was also suggested that the Board of Health reach out to the Foxborough Schools and extend an invitation to be included in any future flavored tobacco discussion.

Upon hearing the comments, the Board thanked everyone for their input. Mr. Arvedon asked Ms. Sbarra how the Board could move forward should they decide to restrict flavored tobacco. Ms. Sbarra stated that a new draft regulation would need to be developed with language that restricts the sale of flavored tobacco to adult only stores within the Town of Foxborough. The proposed amendment would need to be discussed and ultimately approved by the Board.

The Board agreed, based on the public input heard during the meeting that a future discussion on flavored tobacco is warranted, but should not be continued during that evening's meeting. It was decided that the discussion and the vote to occur tonight should be limited to the amendments that were incorporated in the draft regulation and advertised as such in the public hearing. A discussion and a new draft regulation to incorporate a flavor restriction can be revisited during a future meeting.

Marilyn Edge offered to provide the Board with a vaping presentation at a future meeting.

Eric Arvedon made a motion to accept the amendments to the current Board of Health Regulation entitled "Restricting the Sale of Tobacco Products" as written, which include definition updates, prohibition of the sale of tobacco products by health care institutions and fines for non-compliance and license suspensions shall be enforced. This amended regulation will have an effective date of December 30, 2018. Todd Whitehouse seconded the motion. Discussion included Eric Arvedon stating that he would like to further discuss the monetary fine amounts at a later date. Hearing no further discussion, Paul Steeves called for a vote. All in favor, motion passed 3 – 0.

Hearing no further comments relative to the tobacco regulation public hearing, Paul Steeves declared the matter closed at 8:35 p.m.

**8:35 p.m.      Toby Keith's I Love This Bar and Grill                      Discussion of Recent Food Inspections and associated violations.**

No one representing Toby Keith's I Love This Bar and Grill was present at the time of their appointment. Although no one was present, the Board reviewed the most recent inspection reports and were concerned about the repeat violations noted and the deep cleaning issues within the establishment. They requested that Toby Keith's appear in front of the Board of Health during the November 26, 2018 meeting at which time they can inform the Board of the steps that have or will be taken to move the establishment into full compliance.

**9:10 p.m.**      There were no bills requiring approvals.

**9:11 p.m.**      Eric Arvedon made a motion to approve the minutes of October 22, 2018 as written. Paul Steeves seconded the motion. Hearing no discussion, Paul Steeves called for a vote. All in favor, motion passed, 3 – 0.

**9:13 p.m.      Health Directors Updates**

- As a follow up to the discussion that occurred during the public hearing, Pauline Zajdel stated she would contact the administration of both the Foxborough Middle and High School to discuss and gather input to the idea on holding a Board of Health sponsored presentation on vaping for the students and their families.

**9:20 p.m.**      Eric Arvedon made a motion to adjourn. Todd Whitehouse seconded the motion. All in favor, motion passed, 3-0.

The next meeting is scheduled for November 26, 2018.

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Todd Whitehouse, Clerk/dp