



TOWN OF BURLINGTON, MA
BOARD OF HEALTH
MINUTES
TOWN HALL MAIN MEETING ROOM

TUESDAY, JULY 26, 2022

Board Members Present: Ed Weiner, PhD, Chairman; David McSweeney, Vice Chairman; Gayle Damore; and Andrea Sheehan

Board Members Absent: Maribeth Welch

Staff Members Present: Susan Lumenello, REHS/RS, CHMM, Director of Public Health; Michael Greene, Associate Health Director; Christine Mathis, Environmental Engineer; and Marlene Johnson, Health Agent

I. Open Meeting/Pledge of Allegiance

Dr. Weiner called the Board of Health meeting to order at 7:00 PM.

The Pledge of Allegiance was recited.

II. Approval of Minutes:

MOTION: Mr. McSweeney moved to approve the Board of Health minutes of May 24, 2022 as amended. The motion was seconded by Ms. Sheehan and voted 4-0-0.

III. Chairman's Report:

Dr. Weiner stated that Board of Health has received a large grant, and will coordinate and administrate a three-year, almost seven-figure program along with the towns of Wilmington and Lexington to provide additional public health programming to the region. Additionally, planning for our Public Health Faculty Program has begun.

There is a rumor that bio-tech laboratories will soon replace retail space within the Burlington Mall. Dr. Weiner emphasized that this rumor is not true since the Mall is not zoned for bio-tech and any zoning would need to be handled and approved at a Town Meeting. Also, the Board of Health would require major hazardous material and bio-tech oversight. Dr. Weiner then stated that he will appoint a subcommittee made up of himself, Mr. McSweeney, and the professional staff to review our current Burlington bio-tech regulations, and if necessary, make further changes to strengthen our bio-tech oversight to ensure Burlington will be fully and unquestionably safe.

IV. Citizen's Time:

There were no citizen's coming forward.



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

MOTION: Ms. Sheehan made a motion to make an agenda change this evening by discussing the Update on Structural Integrity of Abandoned Bunkers Report at 147 South Bedford St. ahead of the Hearing. The motion was seconded by Ms. Damore and voted 4-0-0.

V. Discussion:

Northeastern University; 147 South Bedford Street – Update on Structural Integrity of Abandoned Bunkers Report

Paul McAndrew, Senior Project Manager at Northeastern University, and Gregg Cohen (attending remotely), structural engineer, appeared for the discussion at 147 South Bedford St.

Ms. Mathis stated that the educational facility at 147 South Bedford St. was once a missile launch site from the late 1950s through the early 1960s. There are two bunkers embedded underneath the parking lot. When Northeastern University came before the Town for a special permit and site plan approval, one of the requirements was for an engineering analysis and opinion regarding the structural integrity of each bunker to be conducted by a Massachusetts licensed structural engineer. The analysis concluded that the existing concrete roof structures on the two bunkers were not of adequate capacity to support what was already in place above them, as well as additional weight from heavy equipment. As a result, Northeastern placed restrictions on the use of the parking space above the bunkers. Another requirement called for a periodic review / inspection of the structural integrity of the abandoned missile bunkers. The initial structural engineering report was completed. However, the updated report was due last June of 2021.

Dr. Weiner stated that it's been three years since someone inspected the silos and it makes me nervous that something's going to happen. We just ask for them to be looked at every two years just to make sure that vehicles and students coming to Burlington do not fall through the driveway.

Mr. McAndrew stated that Northeastern apologizes, but the pandemic as well as a major turnover of senior level staff definitely affected things. We are going to be moving forward with an investigation as soon as we possibly can. We have a proposal from our structural engineer to revisit the bunkers and perform a structural investigation.

Mr. McSweeney stated that Northeastern has always been a good community organization but is concerned because the structural integrity appears to be worsening. Mr. McSweeney then asked if the investigation entails cordoning it off or removing the bunkers. Mr. McAndrew replied that the investigation focuses on the structural integrity of the ceiling / roof structure of the bunkers (where the beams in the concrete deck span approx. 60 feet). He also stated that the bunkers were cordoned off.

Dr. Weiner and Mr. McSweeney asked if we can make an agreement that the findings will be done by October. Mr. McAndrew agreed.

MOTION: Mr. McSweeney made a motion requiring Northeastern University to update the structural integrity study of the bunkers and report the findings back to the Board of Health at the first meeting in October. The motion was seconded by Ms. Sheehan and voted 4-0-0.



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

VI. Hearing:

Revise Burlington Board of Health Regulations Restricting the Sale of Tobacco Products

Cheryl Sbarra, Executive Director and Senior Staff Attorney for the Massachusetts Association of Health Boards, appeared for the Hearing (attending remotely).

Ms. Lumenello stated the proposal is to adopt the new regulations restricting the sale of tobacco and vape products and rescind the current regulations. The proposed regulations are based on sample regulations which incorporate the current state regulations into local regulations. Current DPH regulations can't be changed. A subcommittee met on July 6 and recommended the following amendments to be consistent with state regulations:

- Sections 3.0 and 8.0:
 - Adds a definition of a flavored tobacco product and a tobacco product flavor enhancer
 - Prohibits the sale of any tobacco-flavored product or any tobacco-flavored enhancer
- Section 14.0:
 - A violation of a state regulation will result in a fine of \$1,000 (increased from \$100) and a permit suspension of three days
 - A second violation will result in a fine of \$2,000 and a permit suspension of seven business days
 - A third violation will result in a fine of \$5,000 and a permit suspension of 30 consecutive business days
 - Violations under the local regulations keeps the fines and permit suspension periods the same
 - Section 14.3 allows for the permanent revocation of a tobacco sales permit in the case of four violations or repeated egregious violations within a 36-month period

Dr. Weiner asked if a violator could appeal and if they have to appear before the Board of Health. Ms. Lumenello replied that they would appear before this Board for a hearing, but the only question that would be posed was whether the sale was made or not.

Ms. Lumenello gave an overview of what was discussed at the July 6 subcommittee meeting:

- Section 3.0:
 - Recommended to add “roll your own packages shall be considered blunt wraps” to the definition of cigar
 - This would then prohibit the sale of these tobacco leaf kits (subcommittee recommended to keep this in)
 - Recommend adding “rolling paper with a characterizing flavor” to the definition of a tobacco-flavored product
 - This would then prohibit the sale of flavored rolling papers (subcommittee recommended to keep this in)
- Section 5.8:



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

- Mandates that a permit will not be renewed if sales to a person under the age of 21 has occurred three times within the previous permit year (subcommittee recommended to keep this in)
- Section 8.0:
 - Added the wording “to possess, hold or keep” regarding a tobacco-flavored product / enhancer (subcommittee recommended to keep this in)
 - In other words, any product would have to be completely removed from the establishment
- Section 14.0:
 - Board of Health can increase the time frame for suspensions and increase the fines (subcommittee recommended to keep this in)

Ms. Sbarra stated that the rationale behind a lot of the changes is to comply with the state law so that it's easier for the retailers to understand and easier for the professional staff to enforce. Because the fines are so high for the state law provisions, we've had to come up with a different enforcement strategy and can no longer use non-criminal disposition. Non-criminal disposition only goes up to \$300 and so we've drafted a cease-and-desist order based upon the Department of Public Health regulations in the state law. That template lays out for the retailer their right to a hearing and their right to an appeal whenever the law is allegedly violated.

Dr. Weiner asked if institutions around Massachusetts know that the state regulations have changed. Ms. Sbarra replied yes, because the combustible tobacco product provisions went into effect at the beginning of June 2021. Since this went into effect during the pandemic, there was not a lot of inspections taking place, and so during this time a lot of health departments and tobacco control programs reached out to retailers to let them know about these changes.

MOTION: Ms. Damore moved to approve the revised Burlington Board of Health regulations restricting the sale of tobacco products. The motion was seconded by Mr. McSweeney and voted 4-0-0.

Ms. Sbarra asked to include an effective date upon publication.

MOTION: Ms. Damore moved to modify the previous motion to approve the revised Burlington Board of Health regulations restricting the sale of tobacco products to be effective upon publication. The motion was seconded by Mr. McSweeney and voted 4-0-0.

Revise Burlington Board of Health Regulations Prohibiting Smoking in Workplaces and Public Places

Ms. Lumenello stated that these amendments are necessary to be consistent with the state regulations. There were several areas that were discussed at the subcommittee meeting on July 6 regarding Section 4.3 where smoking is prohibited. The recommendation on buffer zones around municipal building entrances, municipal-owned parks and playgrounds, and municipal-owned athletic fields was no position and to bring it before the full Board for discussion. The areas not recommended were membership associations; hotels,



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

motels, and B&B rooms; outdoor restaurant/bar locations; and public transportation/bus and taxi waiting areas. There are no nursing homes in Burlington and so that was not included.

In discussion regarding the buffer zone around municipal building entrances, Ms. Johnson stated that if you set a buffer zone you have to consider where a person is going to be from that distance (i.e., at 25 feet from the front door, they could be in the middle of a parking lot). Another option is to set up a smoking area since there's going to be cigarette debris all over the place in those areas.

Ms. Lumenello stated that she talked to the Town Administrator on this matter because of the way the regulations are written, and it would be the owner of the property who is required to enforce it.

Mr. McSweeney asked what the violation is today for municipal buildings. Ms. Lumenello replied that if smoke came back into the building, they would be in violation of these regulations, regardless of how far away they are from the door.

In discussion regarding municipal- owned parks and playgrounds, and municipal-owned athletic fields, Ms. Lumenello stated that those are under the purview of Parks & Recreation. She spoke with Brendan Egan, Parks & Recreation Director, who stated that adding these provisions and asking Town staff to enforce them would be time consuming and could lead to unnecessary confrontations.

Mr. McSweeney asked if the regulation states that if an event is open to the public that there's no smoking. Ms. Sbarra replied that state law provides very strict requirements for smoking in private clubs. Club members are not supposed to be smoking in the public areas in any event. Rather, behind self-closing doors. Ms. Sbarra also mentioned that signage is really helpful even if it's just an advisory. A school-sponsored event on an athletic field would have to be smoke free and that's already in the state law. We're about compliance and not about punishment.

Dr. Weiner asked if we can ask the Parks & Recreation Department to put up some advisory signs. Ms. Lumenello stated that she will reach out.

In discussion regarding hotels, motels, and B&B rooms, Ms. Lumenello stated that hotels / motels already have smoking rooms, and that the subcommittee didn't really see any need to ban smoking on the entire property.

In discussion regarding outdoor restaurant/bar locations, Ms. Johnson stated that even though it's not enforceable in our regulations a lot of the restaurants that have outdoor seating don't allow smoking.

MOTION: Mr. McSweeney moved to approve the revised Burlington Board of Health regulations prohibiting smoking in workplaces and public places to what was recommended by the subcommittee and exclude Section 4.3 d, e, and f to be effective upon publication. The motion was seconded by Ms. Damore and voted 4-0-0.

VII. Staff Reports:

Health Agent



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

Ms. Johnson presented her report.

- FDA Retail Program Standards: chose three of nine standards to complete
 - Standard One (comparison of our current food code regulations with the most recent FDA food code in 2017) is completed
 - Standard Two (inspection protocols) is completed; being reviewed by verification auditor
 - Standard Three (how inspections are conducted) will be completed by September; working alongside Mr. Greene and Ms. Hardy

Dr. Weiner asked a question about complementary pH kits. Ms. Johnson replied that was part of the grant and we thought it would be beneficial for those who have sushi operations by giving them a test kit as backup in case their pH meter were to run out of batteries, or one were to break.

Dr. Weiner also asked about suspending a permit at 85 Wilmington Rd. and whether they are still in operation at this point of time. Ms. Lumenello replied that it is for the violation of a local regulation and is not an imminent hazard and so there's no reason not to allow them to continue to operate. However, this is a second violation in a two-year period. This is happening a lot because these establishments have quick turnover, and they have to train new hires. If it's something that the Board doesn't want to see, we could revise our internal policy.

Ms. Johnson mentioned that the state regulations require that you must have at least one person who's a certified food protection manager from open to close. Dr. Weiner asked if there is a training center for this food safety manager. Ms. Johnson replied that they take a proctored exam and that she is looking to become a certified trainer and proctor by offering a class at least twice a year to employees that work in Burlington. Our main target is the restaurants that have these issues. Ms. Sheehan asked if someone has to be there during all hours of operation seven days a week. Ms. Johnson replied that there might be two or three shifts and that the people working those shifts need to be a certified food protection manager. For example, you might have five people in the whole store that are certified, and their schedule may overlap.

MOTION: Mr. McSweeney moved to approve the Health Agent's report. The motion was seconded by Ms. Sheehan and voted 4-0-0.

Environmental Engineer

Ms. Mathis presented her report.

- Next Household Hazardous Waste Day is on September 17
 - Pushing the spring event for 2023 back almost two months to give people plenty of time to get their spring cleaning done
- Mosquito Control
 - For Burlington: low for West Nile Virus (WNV) and remote for Eastern Equine Encephalitis (EEE)
 - There have only been three positive mosquitoes for WNV detected in Massachusetts (none in



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

Middlesex County)

Ms. Mathis stated that the reason why there's two reports for former Bellofram and High Voltage Sites is because one is a long existing release site dating back to the 1950s – 1970s. The most recent one from June is because of the new PFAS regulations under the MCP. Such sites with potential for PFAS contamination are required to go back and start sampling for that.

Dr. Weiner asked Ms. Mathis to provide an explanation as to what ORC is. Ms. Mathis replied that they try to intercept a contamination plume (an underground reservoir of contamination that usually flows with groundwater) which over time contaminates both the groundwater and the sediment around the groundwater. What they try to do is place oxygen releasing compound (ORC) socks in a series of wells which are designed to react with the contaminants of concern. The natural breakdown can take 30-40 years, but ORC will sometimes speed that up by 10-15 years.

MOTION: Ms. Sheehan moved to approve the Environmental Engineer report. The motion was seconded by Ms. Damore and unanimously voted 4-0-0.

Associate Director of Public Health

Mr. Greene presented his report.

- Shifting our online permitting from civic engagement to Viewpoint
 - This will make it a lot easier for customers to come in and apply and it will also be a lot easier for us to manage the workflow. If they submit an application that doesn't have everything we need, we can kick it back to them to get what we need before we move on to the next steps

Mr. McSweeney asked about an FBI complaint. Mr. Greene replied that it was a foodborne illness complaint that we received through MAVEN. After follow-up with the complaint, it didn't seem like it was the establishment they thought it might have been as they had eaten at several other establishments across the country that may have fit better with the symptoms they had.

MOTION: Mr. McSweeney moved to approve the Associate Director of Public Health report. The motion was seconded by Ms. Sheehan and unanimously voted 4-0-0.

Director of Public Health

Ms. Lumenello presented her report which included the Associate Health Inspector, and Supervisory Nurse.

Mr. McSweeney asked whether we are all set with flu vaccine orders. Ms. Lumenello replied that we put in our order, and it usually gets shipped around September.

Dr. Weiner asked if we are contact tracing monkeypox. Ms. Lumenello replied that there's a question package that we would go through with the person when there's a confirmed case. Unlike COVID, monkeypox is not transmissible through the air and that you would have to be in close contact with someone



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

who already has lesions or is symptomatic. There is an ability for people to get vaccinated if you fall into a high susceptibility category and that's going to be determined by your provider or DPH. However, there's a limited supply of vaccines. We had one contact, but it really wasn't a close contact because they were on a plane. We did reach out and followed-up with that individual to let them know.

Ms. Lumenello added that we still have COVID test kits and so members of the public can stop by the Board of Health and pick up the test kits.

MOTION: Ms. Sheehan moved to approve the Director of Public Health reports. The motion was seconded by Ms. Damore and unanimously voted 4-0-0.

VIII. Adjourn

MOTION: Mr. McSweeney to adjourn the Board of Health regular meeting at 8:31 PM. The motion was seconded by Ms. Sheehan and unanimously voted 4-0-0.

*Respectfully Submitted by Eric Bergeron,
Recording Clerk*



TOWN OF BURLINGTON
BOARD OF HEALTH MINUTES
JULY 26, 2022

DOCUMENTS REVIEWED AT MEETING – TUESDAY, JULY 26, 2022

I. Open Meeting/Pledge of Allegiance/Agenda

II. Approval of Minutes: May 24, 2022 & July 6, 2022 subcommittee

III. Citizen's Time: None

IV. Chairman's Report: None

V. Discussion:

Northeastern University; 147 South Bedford Street – Update on Structural Integrity of Abandoned Bunkers Report

7/26/22 C. Mathis memo; 6/26/19 C. Mathis memo with conditions; 7/20/22 C. Mathis appearance letter

VI. Hearing:

Revise Burlington Board of Health Regulations Restricting the Sale of Tobacco Products

Model Regulations (2022 Sales Regulation); Redlined Board of Health Regulations Restricting the Sale of Tobacco and Vape Products; 7/5/22 & 7/12/22 Legal Notices Advertised in the *Daily Times Chronicle*; 7/7/22 S. Lumenello letter notifying currently permitted tobacco establishments of hearing.

Revise Burlington Board of Health Regulations Prohibiting Smoking in Workplaces and Public Places

Model Regulations (Local ETS Regulation Checklist); Redlined Board of Health Regulations Restricting the Sale of Tobacco and Vape Products; 7/5/22 & 7/12/22 Legal Notices Advertised in the *Daily Times Chronicle*; 7/7/22 S. Lumenello letter notifying currently permitted tobacco establishments of hearing; 7/21/22 B. Egan email regarding Amendment to Regulations.

VII. Staff Reports: Health Agent's Report, Environmental Engineer's Report, Associate Director of Public Health's Report and Director of Public Health's Report (Includes and Associate Health Inspector and Supervisory Nurse's Reports).

VIII. Adjourn: None