



# Public Meeting

**Judge Welsh Meeting Room**

Thursday  
July 21, 2011  
4:00 p.m.

**Members Present:** Laurie Delmolino, John Livingstone,  
Mark Phillips, and Elizabeth Williams.

**Members Absent:** Joe DeMartino and Ken Janson.

**Staff:** Jane Evans Health Agent (excused)  
Brian Carlson Health Inspector

The meeting was called to order at 4:05 p.m.

## **AGENDA**

### **Public Comments**

Gregory Daniels said that he would like the BoH to really think about the proposed new smoking regulations. You will be pitting neighbor against neighbor if this ruling goes through. There are gray areas he pointed out where guesthouses that serve food (breakfasts) on their decks and allow smoking should be included in this legislation but would be given an unfair advantage if they didn't adhere to the "no outdoor smoking" rule. Gregg also submitted a letter for the file.



Mr. Wilson gave an overview of the state law banning smoking in outdoor areas which went into effect in 2008. Regarding outdoor smoking he said there were guidelines put in at that time regarding half walls, enclosed areas, etc used to calculate the amount of enclosed space to determine if smoking was permitted or not. He then gave out a hand-out detailing how several cities have further restricted their outdoor smoking policies, i.e., Boston, Lynn, Newburyport, Easthampton, Bourne, Martha's Vineyard, Andover, Amherst, and Hatfield. An interesting aside was that Boston even bans smoking on loading docks.

John L. asked if it were the local Boards of Health who had crafted their own language. Yes, Don replied.

Wilson said that Mayor Menino (Boston) saw these regs as a good thing for Boston and encouraged their adoption. Wilson feels that smoking - even outdoors - is an issue for local Board of Health to decide.

Barnstable, Falmouth, and Braintree have banned smoking on public beaches. Wilson said that Provincetown's regs are very old when it comes to selling tobacco products. He has sample language that he will share with Brian which the Board can consider updating at a later date.

John to Wilson - have you been invited to a lot of these discussions? Mr. Wilson replied yes, and that one recent example is Amherst - They restricted outdoor smoking in restaurants that had wait staff.

Wilson also said that he has no knowledge of any regulations that include guest houses and outdoor smoking.

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Gregg Corbo discussed the draft regulation that he has prepared for the Board's review. He said he worked with the public notice and what he understood to be the board's intent regarding the new regulation. He added definitions of an enclosed space and an outdoor space.

He said that the outdoor space should be an accessory to an enclosed indoor space and must be open to the air at all times. It can have no more than one wall with or without a roof. He then moved on to Section 4 - he put in a listing of public places - including all outdoor spaces of restaurants where food is served and areas where smoking is not prohibited - so the distinction that was made is that **smoking is prohibited where food is served.**

John said that one unintended consequence of looking deeper into the second hand smoke issue is that he has learned that exposure to outdoor second hand smoke is harmful within 28 feet; he doesn't think it's just about food service. He thinks the regulation should include drinks and/or food in bars and restaurants and ban it completely. – He feels it's clearer, easier to enforce and most importantly research supports such a conclusion.

Gregg said – if you've got a restaurant and smoking is prohibited – it's as clear as that. The BoH does not have the onus of putting through the evidence that this should be from an enforcement perspective, although total prohibition is the easiest to defend. The argument is that some public health benefit is better than none. Gregg continued by saying that you are a local board and you should have concerns regarding how your regs will affect people and/or business. While a partial ban isn't ideal – as long as it is logically determined it is defensible.

Mark asked Don to follow up on his comments regarding determining an enclosed space.

Don Wilson said – To enforce the existing regulation the state makes a calculation of walls and or roof to determine if 50% or more of the space is enclosed. If it is than smoking is not permitted. Mark noted that Provincetown's existing regulations allow only one wall for an enclosed space so if more than 25% of the space is enclosed smoking is not permitted.

The discussion then centered on crafting specific language. There was discussion about eating areas of restaurants, what constitutes outdoors etc.

Brian asked – if we wanted a regulation similar to Amherst and did we want to regulate based on wait staff?

John asked Donald to comment on Ogunquit because they are very similar to Provincetown in many ways. Donald responded that outdoor smoking is banned in all restaurants and bars in Ogunquit.

Gregg said that we have an issue with the wording of the draft so he wonders – as a matter of policy – if the Board has determined how far you want to go with this? - and then you have to talk about the particular language. He thinks we should have a few different ideas on the table about this. You've

also said let's ban smoking in public places only if there is food – or let's stick with what we've got and those are the 3 options you're thinking about. Gregg asked - what do you want his directive to be – want a couple of samples? Laurie said yes having a couple of different drafts would be helpful.

Betty said that she is new to the board and she was under the impression that the BoH was tasked to do this. She was disappointed with the public hearing on June 16<sup>th</sup> in that we didn't have a single person who spoke in favor of banning outdoor smoking, although letters of support and an opinion from the Banner did come in after the public hearing. She has mixed feelings about it.

Brian posed the question to DL Wilson asking if perhaps the regulation could be based on the type of license the establishment has to distinguish between restaurants and bars. Wilson talked about the difficulties of crafting a regulation this way as most cities and towns issue common victualler's licenses and everyone gets a cv license so its very difficult to make those distinctions and that's what led us to get a smoking law passed. In other words – bars have the cv license & serve food – even though it may only be popcorn and/or nuts. Brian will get with the licensing agent and compile a list of licenses.

Finally two motions were made:

**Motion: Move to amend the draft regulations provided by Gregg Corbo taking into consideration the definition of enclosed space; the draft regulations will be prepared for the next board meeting which will occur in three weeks on August 11<sup>th</sup>.**

**Motion: The second draft would include the suggestions of Dr. Livingstone to ban smoking in all outdoor areas of bars and restaurants so the board would have two options to consider.**

**The above two motions were made by Mark Phillips and seconded by John Livingstone, and voted in the affirmative by a vote of 4-0-0.**

### **Health Inspector's Report**

Brian Carlson commented about the recent beach closures. He did get samples collected this morning and he hopes that they will come back very low. Most of our beaches are open and we'll soon get the results.

John Livingstone wanted to know more about the geo-mean failure. Brian said that Jennifer Sheppard from the DEP and Tim Bridges from the EPA have started a battery of different tests and they will be taking further tests this summer.

**Board Members' Statements**

There were none.

At 5:40 the following motion was made to go into Executive Session to discuss pending court cases.

**Motion: Move to enter into an Executive Session to discuss the court case of Town of Provincetown v. Bryant and to not convene in regular session there after. A roll call vote was taken:**

<b>Laurie Delmolino</b>	<b>Aye</b>
<b>John Livingstone</b>	<b>Aye</b>
<b>Mark Phillips</b>	<b>Aye</b>
<b>Elizabeth Williams</b>	<b>Aye</b>

Respectfully submitted,  
Evelyn Rogers Gaudiano

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2011.  
Mark Phillips, Chair