



Public Meeting

Judge Welsh Meeting Room

Thursday
October 20, 2011
4:00 p.m.

Members Present: Joe DeMartino Ken Janson,
John Livingstone, Mark Phillips,
and Elizabeth Williams, Laurie Delmolino
alternate

Staff: Brian Carlson Acting Health Agent

Others: Bob Collett Director Cape Cod Regional
Tobacco Control Program

**Cheryl Sbarra, Senior Staff Attorney for the
Massachusetts Association of Health Boards (MAHB)**

The meeting was called to order at 4:00 p.m.

Public Statements

There were none.

Minutes of the October 6th meeting.

Motion: Move to approve the minutes of the October 6th meeting.

Motion: Ken Janson Seconded: Betty Williams Vote: 4-0-1 ab (JD)

**Proposed Amendments to Local Board of Health Regulations
PART IX – Tobacco Regulations ARTICLE 1 – Tobacco Control
Regulations**

Bar: An establishment whose business is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages.

Bar area of a restaurant: An area of a restaurant that is devoted to the serving of alcoholic beverages by guests or restaurant patrons and in which the consumption of food is not permitted.

Enclosed Space: Shall be defined consistently with G.L. c. 270, §22, as a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one or more doors, including but not limited to an office, function room or hallway.

Outdoor Space: Shall be defined consistently with G.L. c. 270, §22, as an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Public Place: An enclosed indoor area space that is open to and used by the general public, including but not limited to the following facilities: licensed child care facilities; educational facilities; clinics; nursing homes; all elevators, stairwells, halls, lobbies and entranceways accessible to the public; common areas (not including actual sleeping quarters) of guest houses, bed and breakfasts, inns, hotels, motels, public restrooms; laundromats; hair salons; barbershops; libraries; municipal buildings; museums; retail food establishments; indoor sports arenas; enclosed shopping malls; theaters; auditoriums; public transit facilities; and any function rooms/halls for public meetings or public social functions. A function room/hall used for private social functions shall not be construed as a public place as long as the sponsor of the private function, and not the owner or proprietor of the facility has control over the seating arrangements.

Restaurant: Any establishment serving food for consumption on the premises, which maintains tables for the use of its customers. This includes public and employee cafeterias.

Section 4 – PROHIBITION OF SMOKING IN PUBLIC PLACES

A. As of October 1, 2002, smoking shall be prohibited in all public places, restaurants, bars bar areas of restaurants (100%), including all Outdoor Spaces of restaurants, bar area of restaurants and bars, except as set

forth in section B(3) below. See definitions, section 3 [fill in section letters when regulation is finalized]

B. Areas where smoking is NOT regulated prohibited are listed below:

1. Private clubs
2. Hotel and motel conference rooms/meeting rooms and public and private assembly rooms, including restaurants, while these facilities are being used for private functions.

3. The Outdoor Space of a restaurant, bar, or bar area of a restaurant, provided that all three of the following conditions are met:

- a. the Outdoor Space complies with the requirements of G.L. c. 270, §22(e) and 105 CMR 661.200;

- b. there is no food or beverage service to patrons in the Outdoor Space; and

- c. the Board of Health has certified in writing that conditions a and b have been met. Such certification may be made, at the request of the applicant, in conjunction with the issuance of an annual Food Service Permit for the establishment, provided that proper documentation and opportunity for inspection is provided to Board of Health staff.

PUBLIC HEARING

Mark Phillips, Board of Health Chair opened the public hearing by reading the above notice. He gave the rules for the hearing asking the public to be brief and concise in their remarks and to take no more than 5 minutes. He explained proponents would speak first then those opposed. He gave a brief statement summarizing that over the summer the Board held 3 work sessions. He also advised the public that he had requested an opinion from town counsel on the issue of conflict of interest that had been raised at the public hearing on June 9th. That opinion as well as a concurrence from the State Ethics Commission that no conflict exists is on file with the Town Clerk. He then opened the hearing to any other Board members wishing to make a statement.,

John Livingstone said that each Board member has given this new regulation a full review and he's satisfied with it as proposed.

Mark advised that no letters have been received about the proposed regulation changes either for or against.

The public hearing was then opened up to the public:

Astrid Berg, owner of Pepi's, said that she attended the first public hearing and said that this new legislation will affect her business and she just thinks that many restaurants have options and she gives her customers' choices. She technically could have 50% of her place non-smoking but she stays with a small percentage with smoking. She continued saying that she'd like clarification on: "Where food and beverages are served by a server and/or could someone order and take it to their table

As no one else requested to speak this portion of the public hearing was closed.

Motion: Move that Part IX – Tobacco Regulations Article 1 – Tobacco Control Regulations be approved.

Motion: Mark Phillips Seconded: Ken Janson Vote: 5-0-0

Joe DeMartino said that he has heard that there is a great deal of support of this regulation from the public.

Ken Janson felt the same way.

Betty Williams said that many people have been supportive. But she was disappointed that no one came to speak in support of the BoH.

Kevin Mullaney, a reporter for the Banner, asked when this will be effective.

He was told that technically it is effective immediately but that as the regulation is tied to business licenses, license holders can request a designated smoking area in their business with their license renewal. Any approved smoking areas will be effective January 1, 2012.

Acting Health Agent's Report

Brian said that he has sent in a grant application to the Mass Bays Program seeking funding for additional water quality testing.

He's attending the MOHA annual conference next week in Springfield.

Brian was asked if he needed anything further from the Board to implement the new regulation. He said he would work with Bob who would assist him in determining areas that meet the state regulation for an outdoor space. He will post the new regulation as well as the state regulation on the town's

website under BoH regulations. Brian was asked if staff could respond to Ms. Berg's question raised during the public hearing. Bob Collett responded by saying said that ordering (no server involved) and taking food and beverage to a table would be allowed as long as the state's open space requirements were met. Cheryl Sbarra added that the consumer would have to also clear their own table as no employee of the establishment would be able to work in the designated smoking areas. Brian said the license renewals are starting to come in and expects to be very busy.

Adjournment happened at 4:20 p.m.

Respectfully submitted,
Evelyn Rogers Gaudiano

Approved by _____ on _____, 2011.
Mark Phillips, Chair