

# TOWN OF YARMOUTH

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Board of  
Health  
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Health  
Division

## BOARD OF HEALTH MINUTES February 11, 2019

MEMBERS PRESENT: Hillard Boskey, MD, Chair  
Mary Craig, Vice Chair  
Charles Holway, Clerk  
Debra Bruinooge  
Eric Weston

MEMBERS ABSENT: None

OTHERS: Bruce Murphy, MPH, Health Director  
Amy vonHone, Assistant Health Director  
Lester Hartman, MD, MPH, FAAP  
Roby Whitehouse, Town of Yarmouth  
Carol Ewing, Advisory Committee  
Jill Talladay, Advisory Committee  
Jess D. Oyer, Esq., Fletcher Tilton Attorneys at Law  
Sara McColgan, MHOA  
Mohammed, Owner of small business in Yarmouth  
Alrumm, Owner of Two Properties in the Town of Yarmouth  
Tom Nickinello, Local Town of Yarmouth Resident  
Shabel, Manager of West Yarmouth Mobil Mart  
Tony Morrison, Principal, DY High School  
Bob Collett, Director of the Cape Cod Tobacco Control Program

### I. Public Comment

Hillard Boskey, Chair clarified the difference between a Public Comment and a Public Hearing. Chair opened the meeting for Public Comment.

Jess D Oyer, Esq with the Law Firm Fletcher Tilton PC. Mr. Oyer, Esq. represents The Coalition of Responsible Retailing or CRR. CRR in turn represents and looks after the best interests of small businesses, as those in the Town of Yarmouth, who may be adversely effected by regulations set now or in the future by the Board of Health.

Mr. Oyer's intention is to outline CRR's position on the proposed regulations now before the Board. CRR's position on the restriction of e-cigarettes and other flavored tobaccos to over 21 retail stores will not achieve the well intentioned goal of reducing youth use of the products. CRR proposes a more targeted and effective way to achieve that end is to enact what is known as

Purchase, Use & Possession laws. These laws allow law enforcement to target the youth use itself. Giving law enforcement the authority to confiscate and issue a citation to youth for use of tobacco and e-cigarette products. As is the case of law enforcement with regards to marijuana and alcohol. The regulations suggested by the Board are targeting the stores and not the users.

Sara McColgan, Director of The Tobacco Control Program for the Massachusetts Health Officers Association. Ms. McColgan stated this was a restriction not a ban as the previous speaker kept stating. She felt the language needed to be clarified. The consideration by the board of Health is to restrict the sale of e-cigarettes and menthol flavored tobacco to adult 21 and over stores. Not to ban all retail sales within the Town of Yarmouth. PUP laws in her view is a deflection of responsibility from the Tobacco Companies and onto the youth who are addicted to their products. She stated that if the Board were to consider PUP laws as an option conversations should be had with local Police Offices and Chief of Police to ask if they would be willing to enforce such laws. She supports the fact that Yarmouth Retailers have a 90% non-sale rate in the FDA sale checks. Yet does feel the checks are not a good indication of what is really going on in town. Checks are done so infrequently to get an accurate reading of stores selling tobacco and e-cigarettes to youth. Ms. McColgan does not believe a focus group about the regulation would help.

Mohammed, owner of small business in Yarmouth stated that when the 2014 ban of flavored tobacco was issued by the Board for the Town of Yarmouth most businesses were cooperative. All the while also dealing with 25-30% loss in sales. When a customer comes in to buy the proposed tobacco products they are also buying chips, soda, milk, etcetera. These customers become repeat customers boosting the sales of small business. Mohammed believes this new restriction of tobacco sales will push customers and retail sales to surrounding towns who are not considering enacting such bans. Mohammed pleads with the Board to take into account the hardship on small business such a ban would have. Costs of running the businesses are going up yet their income would be going down.

Alrumm, owner of two properties in which he has invested 3 million dollars stated when the initial ban came he felt the financial hardship it caused, yet he accepted the town's decision and continued on. He does not feel that his business can endure another cut back in sales. His property taxes continue to go up yet his selling options in the town continue to be cut. Feels he is being pushed out of the Town. Stated that the town of Hyannis turned down this exact ban on e-cigarettes. Alrumm would encourage the ban to be tried in the larger cities and towns and if it works he would stand behind the board but at this time he asks the board to reconsider restricting flavored tobaccos and e-cigarette products to 21 and older establishments. Stated if the Board decides to move forward with the regulation he requests a public hearing to give the town people the option to choose.

Tom Nickinello, town of Yarmouth resident. Mr. Nickinello asked for clarification on the listening and education portion of the agenda posted for today's meeting. The Chair replied this portion was for all to listen and learn from each other on the topic of flavored tobacco and e-cigarettes. That there would be two more meetings on the subject and referred to Health Director for confirmation on those dates. Mr. Murphy indicated the next two Board of Health meetings were scheduled for February 25<sup>th</sup> and March 11<sup>th</sup> at 4pm.

Parish Battel owner of two convince stores in Yarmouth for the last 15 years. As a retailer he is against the restriction. Stated that back when the age was raised from 18 to 21 to buy cigarettes and e-cigarette products he and other area retailers were on board. Now that the Board of Health wants to further their control of retailers options to sell tobacco products he no longer stands behind the Board. Does not agree with the concept of a 21 year old person not having the right to buy tobacco or e-cigarettes at a convince store here in the Town of Yarmouth. Feels the restriction is hurtful to the retailer not the answer to youth smoking.

## **II. Discussion – Route 28 Auto Service – Mobil, 601 Rt. 28, West Yarmouth, MA 02613**

During a recent Food and Drug Administration, Center for Tobacco Products Compliance Check, a minor under the age of 18 was able to purchases tobacco (e-cigarette) from the above noted store. There have also been past violations, January 27, 2016 FDA compliance check sale to minor. June 2, 2017 a Cape Cod Regional Tobacco Control Compliance check sale to a minor Board of Health \$100 fine. A Board of Health flavored tobacco violation on February 13, 2018 (second offense) \$200 fine, and tobacco license was suspended for 7 days from March 6 to March 13, 2018.

Health Director asked what steps were being taken to ensure these violation would not happen again. Shabel, manager of the Mobil Mart, stated that each day he reminds his employees to check id's and that he has put signs up at the registers stating you must be 21 years of age to by tobacco and e-cigarette products in hopes of reminding staff to check id's prior to sale of tobacco products. The employee who sold to the minor has since been let go.

Chair stated it is hard for the Board to have confidence in the manager that this situation will not happen again. What are the specific steps you can take to ensure this will not happen again? Shabel stated he can continue to educate his staff and put up more signs. Health Director questioned whether he had registrars that automatically requested birth date prior to sale of tobacco products. Shabel stated they did not but it might be worth the investment as well as cameras above registers.

## **III. Listening and Educational Session – Tobacco Board Discussion**

Tony Morrison, Principal of DY High School stated that the e-cigarette use has increased. Kids now prefer juuling over tobacco which has brought unique challenges to the school staff. Unlike tobacco, juuling and e-cigarettes have no smell nor can they be detected by smoke detectors. The schools have had to bring in vape sensors to detec smoking in the bathrooms. Similar to previous struggles of the past with students smoking on campus or in bathrooms, juuling and e-cigarettes is harder to police within the school. Teachers and staff who are responsible to patrol such behaviors on campus are having a very difficult time ensuring the safety of students and enforcement of rules.

Principal Morrison stated that while they are not finding cigarette butts on the grounds as much they are finding empty juul pods. The students are able to buy these products on line and from retail stores. Number of schools across the country are seeing an increase of julling within schools.

Chair stated he would like Principal Morrison, Health Director, Bruce Murphy and himself to get together and discuss what forms of education could be implemented within the schools.

Lester Hartman, MD stated his support and excitement of Yarmouth Board of Health's progressive approach to restricting sales of tobacco products to 21 years of age. Dr. Hartman believes it is the smaller towns that influence change the greatest and thanked the Board for its initiative.

Dr. Hartman has been a practicing pediatric medicine for 32 years and has never seen an epidemic such as juuling spread so rapidly.

He stated that while e-cigarettes are effective in limiting the use of tobacco products it does not help folks stop the use of nicotine, which is the addictive drug found in tobacco products. Nicotine Replacement Treatment are more effective in getting people off of nicotine and tobacco products than e-cigarettes.

Dr. Hartman is supportive of keeping our youth away from tobacco and e-cigarette products for the purpose of allowing their brain to develop in a healthy and natural way. The brain is not fully developed till the age of 25. The most vulnerable age for tobacco use is also the most common age group for starting, ages 12-18. Most lifelong smokers started at this age. Dr. Hartman quotes findings from a 2015 article "Nicotine and the Developing Brain" which stated, nicotine exacerbates mood disorders in kids, impedes frontal lobe development, rewires and enlarges the addiction center of the brain.

Bob Collett, Director of the Cape Cod Reginal Tobacco Control Program. Mr. Collett stated, this is an absolute public health crisis primarily occurring amongst young people. Marketing of these products are directed to our youth. This program is in high demand to go in to our local schools and speak to the dangers of these products with their staff and administrators. Stated we are about three years behind the curve on this issue. Kids were using these products long before we knew due to the fact that they are undetectable and that our youth believe these products are not a danger to their health because it is a harmless water vapor. Mr. Collett applauds the efforts by the Board to move forward on this topic.

The Chair asked if were working with Middle Schools. Mr. Collett stated they are not contractually permitted to speak to the youth directly and their information and education is given to the staff, teachers, administrators and nurses. This is due to the fact that there is no scientific research that supports the effectiveness of talking to youth of its dangers. DPH prefers a peer mentor approach and does have a program in place which teaches kids how to talk with other kids about these issues.

Health Director asked the Board for clarification on their intentions/direction for the next meeting on the 25<sup>th</sup> of February with regards to tobacco. Further listening session or potential regulation draft for discussion?

**MOTION:** (Mary Craig, Vice Chair) Next meeting should have a proposed regulation draft submitted for discussion. Draft to be based on Needham and Summerville's current regulation.

**Seconded:** Debra Bruinooge

**Discussion:** None

**Vote:** Unanimous

**IV. Discussion – Recycle Committee – Polystyrene Reduction By-Law**

Recycle Committee came before the Board requesting a polystyrene reduction bylaw which has been put into effect in Dennis and Wellfleet. Members present: Carol Ewing, Co-Chair of Yarmouth Recycling & Solid Waste Advisory Committee, Jill Talladay, Co-Chair of Yarmouth Recycling & Solid Waste Advisory Committee and Roby Whitehouse, Waste Management Superintendent for the Town of Yarmouth.

Carol Ewing stated that the committee is looking to reduce the use of polystyrene products particularly those associated with food containers. The reasons for this ban are as follows. Polystyrene products (Styrofoam) containers are a health hazard due to the carcinogens used in the manufacturing. Carcinogens are cancer causing agents which are released when polystyrene is heated, as most to go containers are or coming into contact with hot items. Pollution and degradation of the terrestrial and coastal environments. Polystyrene does not denigrate nor is it bio-degradable similar to plastics. Contributing to the harm of marine and terrestrial wildlife through ingestion and entanglement. Disposal burdens for solid waste collection and recycling facilities. The economic burden is too great from most towns to take on. Polystyrenes must be extremely clean in order to recycle.

Four towns on the Cape have already banned polystyrene; Dennis in 2017, Wellfleet in 2018, Provincetown will become effective as of June 2019 & Orleans in 2020. The Committee would like to base the Town of Yarmouth bylaw on Orleans' bylaw. They target food establishments, retail and public establishments that prepare food, including schools. Prohibit single use cups, plates, lids, utensils, straws and trays. This is not an inclusive list. This does not include packing materials or coolers. Bylaw to be enforced by town police officer or agent of the Board of Health. Ms. Ewing stated that they were before the Board today to hear the Boards response to this proposed bylaw and any direction or concerns the Board may have.

Ms. Burinooge, member of the Board asked what alternatives are being used in other towns to which Ms. Ewing stated paper base products that can decompose. Plants based products such as bamboo are being used for cutlery.

Chair addressed issue of public venues and what the committee's proposal would be for them. Roby Whitehouse stated it was to cast a wide net to include schools, churches, senior centers and all town public facilities. Based on her conversations with other towns most are wanting to incorporate the most bio degradable products as possible.

Chair asked what the time frame would be for establishments to prepare for the change. The committee responded stating a year would be a reasonable amount of time for them to prepare and to deplete their polystyrene products.

Ms. Bruinooge asked how the enforcement in other towns has been with the committee stating that no push back or citations have been reported.

The recycle committee will be back with a proposed draft in a month or two.

**V. Protect Our Cape Cod Aquifer – POCCA**

Health Director Bruce Murphy update the Board on the town's use of Round-up on town properties. Various Town Departments were contacted on their use of Round-up. Most Departments responded they do not use the product. A couple departments use very minimal use and by direct application. The Conservation commission contracts for use on evasive species and fragilities. Conservation Department has updated their position stating they do not feel it is harmful with the minimal use as of now. Health Director stated the Selectmen are looking to the Health and Conservation Departments to make a suggestion to the use of Round-up by our town employees. Charles Holway, Clerk stated he was incline to leave the current use alone considering the effectiveness of the product, the minimal use and that it is used licensed applicators.

Chair stated he is not comfortable with the possible side effects on the environment, wildlife and humans. Does not believe there is the science to know these answers to the effects. Does not agree with the use of herbicides on town property. The Chair indicated to the Board that a decision needs to be voted on or what their recommendation would be to the Selectman; continue the use of herbicides on town property or suggest a ban.

**MOTION: (Mary Craig, Vice Chair)**

Recommend to the Board of Selectmen that town staff continue to explore effective alternatives to the use of glyphosate. Work on public education about the risks associated with the overuse & improper use of all chemical herbicides. In the meantime formulate a town wide policy which allows for the current use with the careful techniques and minimal quantities that the different departments in the town have outlined that they are currently using. And that no other additional use be allowed. Endorsing the Conservation Commission statement on February 11, 2019 and in addition that there be no further or additional use of that chemical allowed in town beyond what is being used now.

**Seconded:** Eric Weston

**Discussion:** None

**Vote:** 4-1

**VII. Approval of Minutes – August 20, 2018**

**MOTION:**, (Mary Craig, Vice Chair) To approve minutes as corrected

**Seconded:** Charles Holway, Clerk

**Unsubstantiated:** Eric Weston

**Discussion:** None

**Vote:** Unanimous

**VIII. Adjournment**

**MOTION:** (Deb Bruinooge) To adjourn meeting

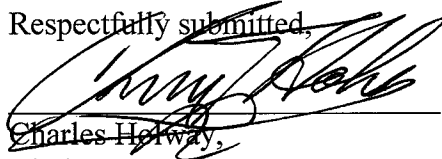
**Seconded:** Mary Craig, Vice Chair

**Discussion:** None

**Vote:** Unanimous

There being no further business, the Chair adjourned the meeting at 6:25 PM.

Respectfully submitted,



Charles Holway,

Clerk

Minutes Taken by Christine Slack