



## BOH MEETING MINUTES 06-07-2023

Council Committee Room, 140 Main Street  
Jim Griffin, Chair  
Joseph Tennyson, MD, Vice-Chair  
Richard Tomanek, Member

Also in attendance: Director John Garside and Clerk Tina Nolin

**The meeting was called to order at 6:30 pm.**

### **Reading and Approval of Minutes**

- Approval of minutes from April 3, 2023, motion to approve was made by Chair Griffin, Member Tennyson seconded, and the vote was 2-0 to approve the 4/3/23 minutes. (Member Tomanek abstained as he was not in attendance at the April meeting).
- Approval of minutes from May 8, 2023, motion to approve was made by Member Tomanek, Chair Griffin seconded, and the vote was 2-0 to approve the 5/8/23 minutes. (Member Tennyson abstained as he was not in attendance at the May meeting).

### **New Business**

#### **Review, discussion, and any action relative thereto regarding the proposed Draft Marlborough Board of Health Regulations Restricting the Sale of Tobacco and Vape Products**

Director Garside reviewed the final changes that were made to the draft regulation as a result of discussions at the May Board of Health meeting.

- The addition of Section (R) p.11 – prohibition at hotels and motels suggested by Member Tomanek at the Board's previous meeting. Director Garside explained that he had spoken to several local General Managers (GMs) here in the city as to their thoughts on tobacco and what they might see coming down the road for their businesses. The feedback was, as Member Tomanek had previously indicated, that "the time had come and gone," at least in Marlborough regarding tobacco sales at these types of facilities, and the GMs did not see going back to it. Thus, the new regulation, in that regard, should not be a burden. Legal did review the draft document regarding its legal form. Director Garside suggested that the prohibition at hotels and motels was reasonable given the fact that Marlborough venues serve so many kids and their activities, like Four Kicks, Hockey at the NE Sports Center, Apex Center, etc. Chair Griffin also felt for the sake of completeness it was important to include this prohibition in any new regulation.
- Director Garside also pointed out that while doing a final QC on the document, two items currently in the local regulations that the Board adopted in 2015 were not in this proposed regulation:
  - On pg. 8 Proximity to Schools – Section E (8) ... " *Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held*

*by the seller of the existing business if the buyer of that business intends to sell tobacco products, as defined herein.”*

Director Garside explained that he thought it should be added to the draft regulation as it now exists in our regulation, and it allows for some status quo that otherwise could cause hardship down the road for some of our commercial establishments. For example, if one of our convenience stores wanted to sell their establishment and a school had opened up within 500 feet of the store, by the current wording a store at this location could not obtain a new tobacco license. Thus, making it hard for the store to sell the location to someone else or to even change the type of legal ownership. By adding this existing language to the proposed regulation, the new owner/store would be “grandfathered” to sell tobacco as long as the application was submitted within 60 days of the store sale/change of ownership.

Chairman Griffin agreed it would be creating a hardship to deny a license in a location that had previously been permitted to sell tobacco just because a school had moved nearby. He also felt that the Board should seek more public input and perhaps have a public hearing if the Board wanted to eliminate this section from the new proposed regulation.

Member Tennyson felt that denying the new tobacco license to a new owner/entity if a school was nearby, made the most public health sense, but was not practical, and felt this was an acceptable compromise. Member Tomanek agreed and said it was fair to both the current and new business owners given that it put a limit on the timeframe to apply after acquiring ownership.

- On pg. 3 Section C. Definitions – Adult-Only Retail Tobacco Store
  - The following was deleted “*that does not have a lottery license,*” given it is not in our current local regulations, and we currently have licensees who have lottery licenses.
  - Changed the proposed regulation wording from, “*whose **ONLY** purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia...*” to “*whose **PRIMARY** purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the sale of other products is merely incidental...*” The word “primary” appears in both MGL and the CMR and our current local regulation, as does the phrase, “... *in which the sale of other products is merely incidental.*”

Following the discussion, Director Garside said that if the Board was comfortable with the changes they could vote and sign tonight. Garside suggested an effective date of July 1, 2023, giving time for the public notice to be posted in the paper.

Chair Griffin motioned to accept the Marlborough Board of Health Regulations Restricting the Sale of Tobacco and Vape Products to be effective July 1, 2023. Member Tennyson seconded. A roll call vote was taken, and the new regulation was accepted unanimously, 3-0.

Member Tennyson motioned to repeal the 2015 Marlborough Board of Health Regulations Restricting the Sale of Tobacco Products, Chair Griffin seconded the motion. The vote was 3-0 in favor of repealing the 2015 regulation.

### **Director's Update**

- MetroWest Tobacco Control Collaborative – The Director reminded the Board that at the beginning of the year the Regional Director of the Tobacco Control Collaborative, Olivia Dufour left. The regional director worked for Marlborough, and 15 other towns in the MetroWest area, conducting inspections and such. In addition, the grant for the Collaborative expired on June 30<sup>th</sup> of this year. We received notice, in the last couple of weeks, that the Collaborative did receive funding of \$250,000 over two years to continue this work in the region. They will thus be looking to hire a Tobacco Control Coordinator over the next few weeks.
- The department has begun inspections on the seasonal pools in the city. We have 24 seasonal pools at 19 different locations, about half of those are currently open and the rest will be open by the end of the month.
- The beaches have been tested a couple of times already and results have been good.
- Recreational Camps will be starting up in the summer that the office inspects and permits – we have about half-dozen camps run throughout the summer months.
- The city Farmers Market starts this month and we have been permitting the food applications as they come in.
- Sewer Variance requests – we have issued five variances to the sewer ordinance to date, all have a 6-month timeframe to comply. Three of them have complied. The fourth is the Red Spring Road project where 11 of the 27 have already connected to the sewer. The last variance of the five was issued on the 24<sup>th</sup> of May and they have until November to comply.

### **Subdivision, Site Plan & Special Permit**

There were no subdivisions, site plans, or special permits to review.

### **Scheduling of the Next Meeting**

The next regularly scheduled meeting of the Board was scheduled for August 7, 2023. It was decided that the July regular meeting may not be warranted unless a time-sensitive issue develops requiring Board action.

### **ADJOURN**

Member Tennyson motioned to adjourn the meeting at 7:06 pm; Chair Griffin seconded the motion; the vote was 3-0 in favor to adjourn.

Respectfully submitted,

  
James H. Griffin

8/7/2023  
Dated