

Meeting Notes from the Regular Meeting of the Peabody Board of Health,

April 22, 2021

In Attendance: Chairperson Thomas J. Durkin III, Dr. Leigh Ann Mansberger, Anthony Carli, Health Department Director Sharon Cameron, and Recording Secretary Lisa Greene.

The meeting was held remotely at 4:00 p.m. Via Zoom

Subject: Meeting to be called to order

Discussion: Mr. Durkin called meeting to order at 4:00 p.m.

Subject: Hearing regarding application for an animal permit by Jane Shay and David Oram of 156 Aberdeen Ave. to keep up to six hens.

Discussion: Ms. Cameron told that applicant Jane Shea was present and promoted her to a panelist for the hearing. She said that there were several people in the audience and asked if anyone else in the Zoom audience was here to participate in the hearing for 156 Aberdeen, and no one replied. Mr. Durkin opened the Hearing at 4:01. He read the hearing notice and began by asking why she is applying. Ms. Shea replied that she is applying because she has 6 hens and wants to be able to keep them. Mr. Durkin then asked Health Inspector John Yale for a briefing on this. Mr. Yale told that he was out previously on a complaint a month ago but went today and found a new structure from the first time he was there. He said it has been secured with chicken wire, has a shade cover for the birds and a ¼ inch mesh for the lower 2 feet to protect against rodents. He told that he walked the property and saw no evidence of rodents, and told that there had been a pest inspection and they had received a favorable report from that inspection. He said that it is a little unusual because the coop is in their front yard but it's at the neighbor's front yard. He said that he had spoken with the neighbor there who had filed the original complaint, and the neighbor was happy with the new structure and said that he is withdrawing his complaint. Mr. Yale said that with that he would now be willing to recommend for approval. Mr. Durkin asked if any board members have any questions. Dr. Mansberger had a question about how Ms. Shea had filled out the application section where it asks if the animals had been vaccinated, so asked if the chickens had been vaccinated. Ms. Shea replied that the chickens had been given feed that had those things in it. Dr. Mansberger said that she was surprised because usually she understood that the chickens receive a vaccination against Marek's disease but said that she was just curious. Mr. Durkin said that he wanted to add that he would like Ms. Shea to keep on top of the recommendations of the pest control professionals. Ms. Shea said that she would. Mr. Durkin asked if there was anyone present on the Zoom call who wished to speak on this matter either for or against. No one replied. Mr. Carli made a motion to approve the permit for up to six hens. Dr. Mansberger seconded it. A vote was taken, and the permit was unanimously approved. Mr. Durkin wished Ms. Shea luck.

Subject: Approval of minutes from meetings on March 25th, 2021 and May 19th, 2020

Discussion: Mr. Carli made a motion to accept both sets of minutes as presented. Dr. Mansberger seconded the motion. A vote was taken and all members voted to accept both sets of minutes.

Subject: Environmental updates- Rousselot Complaints

Discussion: Ms Cameron told that they had received one complaint last month about Rousselot and she was able to get an inspector out there relatively quickly to investigate, but he was not able to verify the complaint. She said that they followed up with Rousselot who said that they thought that it might have been a truck leaving the site and that the odor might have been transitory and added that they also sent someone out to the site right away after receiving the complaint and they were unable to verify the complaint either. She told that this was the only complaint in the month of April. Mr. Durkin noted that the histogram shows that the most complaints are in summer so we are going into that time now. Mr. Carli asked if the reason for this was because more people are outdoors in summer to smell it or was there something happening in their production during the summer. Ms. Cameron told that there had been some discrete incidents that had occurred during summer months because of operational practices there in the past, which they have agreed not to repeat. She also told that a consultant had once reported that the odors might be

Approved 3/24/22

related to air inversions that occur during the summer which would hold air in place that would otherwise be dispersing, so weather can also be a factor.

Subject: Environmental updates -Aggregate Industries Annual Report

Discussion: Ms. Cameron explained that she had not yet had an opportunity to review this year's Aggregate report, and explained that City Council would be taking this under review and that she would be preparing a report from the Health Department on two sections- the noise studies and the air pollution studies. She said that these reports come into us as they are done and then they come into us again as part of the annual report, so none of this is new information and everything looked good when received before, but she will be taking another, closer look before writing her memo. She said that she doesn't believe that anything was different from prior years, and that the reports always show that they are in compliance with the noise levels. She said that the air pollution levels they look at are VOCs, SVOCs, and particulate PM10, and they typically comply with all the required standards as well. She told that sometimes the report comes back showing some compounds present in emissions but the levels reported are within the allowable ranges. There are always a few compounds for which there are no established standards, so it's always a challenge as to how to interpret those. She said that she would generate that memo over the next couple of weeks and it would be on next month's agenda, but she wondered if the Board had any questions or issues with the report. No one had any questions. Mr. Durkin said that we would look forward to seeing the memo at next month's meeting.

Subject: Code Enforcement Updates- Chapter II:

Discussion: Reviewed

Subject: Code enforcement updates- Nuisances:

Discussion: Reviewed

Subject: Code enforcement updates- Chapter X:

Discussion: Reviewed

Subject: Covid Compliance

Discussion: Ms. Cameron told that there had been an issue with Covid Compliance at the Children's Place, and a complaint was filed saying that the management and retail employees failed to comply with quarantine requirements. We fined them and they have decided not to appeal those fines, and we are working with them to revise their covid plans. They now have a better understanding of what the requirements are. Mr. Durkin asked how we learned of this. Ms. Cameron told that we received a complaint from an employee about an exposure, who also reported it to the state, who again reported it to us. She explained that staff conducted a site visit and found three staff members working who had been told to quarantine, and they replied that they were told by a manager that they needed to work anyway and that quarantine was optional, and that when she reviewed their policies and procedures, they were mistakenly believing that they were an essential business, under critical infrastructure, and that under the state regulations they are allowed to not quarantine. Ms. Cameron told that she explained to them that we do not consider their industry a part of the critical infrastructure. Mr. Durkin said that it seems that it is usually through an employee's complaint, as was the case at another business recently, Red's. Ms. Cameron told that John Yale will be doing a follow up there as well as there has been another complaint at that business.

Subject: Hearing at the request of Jajash Patel regarding the notice of violation and hearing issued on March 23, 2021 for violations of the Peabody Board of Health restricting the sale of tobacco products at the Lowell Street Market at 672 Lowell Street Peabody.

Discussion: At 4:15 Mr. Durkin called the hearing to order and read the hearing notice. Ms. Cameron asked that anyone present who was there to speak on this matter to please raise a hand and she will promote them to panelist.
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Ms. Cameron told that she had seen an incoming telephone call during the meeting and it appears that it was from Mr. Patel's attorney, so we may want to give him a minute to join us. Mr. Durkin said that we can hold for a few minutes since he is trying to get in. After several minutes Mr. Patel's attorney had still not joined. Ms. Cameron suggested that the Board move onto other matters and allow Mr. Patel to go and call his attorney. Mr. Durkin said that they would put this into recess and continue onto other matters and will return to this hearing once Mr. Patel has reached his attorney.

Subject: Public Health Nursing updates - March 2021 surveillance report

Discussion: Reviewed. Dr. Mansberger said that she had reviewed the report and had a brief concern over an item, but said that she knows that the Public Health Nurse Chassea Robinson would have given the Board a report had that item been an issue for concern. Ms. Cameron said that Ms. Robinson had reviewed the data and there were no issues of concern.

Subject: School Nursing update

Discussion: Reviewed. Ms. Cameron said that the school nurses have been very busy with contact tracing, and the kids are back in school full time. We continue to see lots of cases and contacts but they seem to be associated with out of school exposures, sporting events and social events, and how we know this is because we do quarantine those in-school close contacts to the child who has tested positive, and we are not seeing cases arise among those kids. Just this week the state COVID system has changed the quarantine requirements where in the past anyone within 6 feet of a positive child would have to quarantine, and now it is three feet. That will ease some of the work load for the nurses, but the state made that decision because the data showed that when we were quarantining kids at 6 feet we were not seeing cases, which is good news.

Subject: Permitting updates- List of permits issued in March 2021

Discussion: Reviewed

Subject: Correspondence-

Discussion: Reviewed

Subject: Reopening Hearing at the request of Jajash Patel regarding the notice of violation and hearing issued on March 23, 2021 for violations of the Peabody Board of Health restricting the sale of tobacco products at Lowell Street Market at 672 Lowell Street Peabody.

Discussion: Ms. Cameron asked Mr. Patel if his attorney had joined or if he had heard anything. Mr. Patel told that he reached his attorney but that the attorney was unable to get onto the Zoom meeting. Ms. Cameron said that she would resend him the link for the meeting. She said that she had now sent it, and suggested going onto another item. All agreed.

Subject: Update on COVID-19 response actions - Revisions to state directives

Discussion: Ms. Cameron reported that there hasn't been anything new, we are still in the first step of phase 4. Everyone in the state aged 16 and over is eligible for vaccination. We have had a very low response rate to our recent testing program, with less than 40 people participating. In the case of vaccinations, we are surprised that we are not receiving more requests. She told that she had actually held a vaccine clinic today. She told that the City is not being provided with vaccine, but the North Shore Community Health Center is, and they transferred 100 doses of the vaccine to this office to administer to those who need it. She told that they had targeted this clinic for food service workers and retail front line workers, having assumed that many of those people may be younger, may be lower income, and may not have health insurance. She told that we had a very poor turnout, though, so we opened up the clinic to anyone age 18 and over, but were still not able to use all 100 doses. We tried to transfer the doses to other providers or other public health departments, but they are finding the same thing, that the demand is not there.
Approved 3/24/22

In Peabody only 46 % of the eligible populations has been vaccinated with the first dose, which is not enough for herd immunity. We are seeing decreased demand so we will be focusing an outreach project on addressing vaccination hesitancy.

Subject: Continuation of 4:15 Hearing: Hearing at the request of Jajash Patel regarding the notice of violation and hearing issued on March 23, 2021 for violations of the Peabody Board of Health restricting the sale of tobacco products at Lowell Street Market at 672 Lowell Street Peabody.

Discussion: Ms. Cameron told that she could see that Mr. Patel's attorney, John Keilty, had joined the meeting and she suggested reopening the hearing. Mr. Patel was in attendance. Mr. Durkin asked first for a report from Health Inspector on this case, Randy Suckney. Mr. Suckney reported that he received an anonymous complaint that a person working at the Lowell Street Market was not wearing face coverings. He told that he went to investigate the complaint on Monday March 22nd. He explained that this store has a history of not keeping their humidor locked, so he automatically checked it as well when he entered. He said he saw a lock on the humidor but it was not locked so he was able to open it and access cigars on the sales floor. The person working admitted that he had not been wearing a face covering and that he had not locked the humidor, saying that he had just helped a customer, had to go behind the register, and hadn't gotten a chance to lock it. Mr. Durkin thanked Inspector Suckney, and then said that Ms. Joyce Redford, Director at North Shore/Cape Ann TAPP, was in attendance. Ms. Redford stated that she was not present for the incident being discussed today, but said that she wanted to say that she has found the same issues at this location. She said that when we first did flavor restrictions here, her team had been there explaining the new regulations, and at that time that humidor hadn't been locked either. She added that the regulation had been in place 8 years, and by now they should know the rules and if they can't keep the humidor locked they should move it behind the counter. Mr. Durkin asked about the penalty that was levied for this offence. Ms. Cameron told that this was a second offence in a six month period, so a \$250 fine which has been paid, but it also carries a 7-day suspension, which is the focus of this appeal. She told that they had been cited for the same offence last year, asking Mr. Suckney for the date. Mr. Suckney said it was October 15th 2020, 1st offence \$100.00. Mr. Durkin said that now is Mr. Patel's turn to say what he would like the Board to know, or have his attorney tell us.

Attorney John Keilty introduced himself and thanked the Board. He told that Mr. Patel told him that it was a second offence, that they felt the lock was on. He added that Mr. Suckney's telling of it was correct, there was a lock, and for some reason the catch did not hold when Mr. Suckney pushed on it, but they thought it was locked. He told that his client would like the board to waive the seven day suspension in its entirety or shorten it to fewer than seven days. Inaudible outside speech came through on the meeting, so Mr. Durkin asked if someone else was trying to be heard. No one replied, so he asked Mr. Keilty to continue. Mr. Keilty said that he would ask that the Board consider a reduction or a waiver. Mr. Patel told that he has now moved the cabinet behind the counter so that now no one can access from the outside. Mr. Durkin asked Ms. Redford if that is adequate. She replied that she hadn't been out to inspect since he moved it, so she can't speak to whether or not it was out of reach, but if it was truly out of reach then that is a solution. Voices were again heard loudly in the background, so Mr. Durkin asked if anyone not speaking could please mute their microphones. Mr. Carli said that it is very disheartening to see someone come back in so soon with the same issue, adding that we like to think after a first offence that people would religiously check on the issue, so it's disappointing to see you back. Dr. Mansberger reminded that several years ago we changed the language in the violation from "May" to "Shall" for consistency sake, since we want to be consistent with every owner. Mr. Durkin asked Ms. Cameron if the Board can use discretion on this. Ms. Cameron said that we can, but the reason for putting that language in was to ensure consistency so that one business owner doesn't claim that we were unfair by putting forth a penalty on one business and not another. Mr. Durkin asked Attorney Keilty's opinion. He replied that he does believe that the board has the discretion to do so. Dr. Mansberger said that she believes we should stand by our intent. Mr. Durkin said that he is concerned that this is a second offence. Mr. Durkin said that he is always interested in how our inspectors are brought to a business, and in this case it was the no masks complaint. He asked what Mr. Patel thought of that. Mr. Patel said that all he can say is the lock was there, some how the inspector unlocked it, but that now he has moved the cabinet out of reach, there is nothing else he can do, he has told his employees they have to wear a mask, and will do his best to follow all the rules. Attorney Keilty asked if there is a possibility, like with the ABCC, to provide a value, where when faced with a closure there is an option to pay some sort of additional penalty based on the sales of the days but not lose the ability to sell on those days, perhaps pay to a charity, but that way they would not lose the ability to service their customers, because in addition

to the loss of money they may have people not return. Ms. Redford replied that this has been brought up in other communities and found to not be allowable and can be seen as a bribe, and no language is in the regulations to allow such a buy-out. She went on to tell that the reason for the suspensions being added to these penalties is because the business owners take a suspension more seriously because it may mean they also lose the gas sale, newspaper, lottery, and the other purchases they would possibly have made that week if they had been allowed to sell their tobacco products, so it is more of a hit to them. The hope is that they will take it seriously and if they don't want the penalty they should take the regulations more seriously and be more diligent. Inspector Suckney told that this is their third violation in 27 months, first January 2019, a verbal warning was issued when they were going around working on flavor restrictions, then the second was the first fined warning, and now they have a third. Mr. Suckney told Mr. Patel that he does not enjoy issuing fines, and feels that the employee who was present is not doing anything to help him, adding that the same person was there on the incidents on October 2020 and March 2021, so it is clear that he needs more training.

Mr. Durkin asked for info on the suspension. Ms. Redford said that all tobacco products must be removed from the premises. Mr. Durkin asked Mr. Patel what will he do with this employee. Mr. Patel said he will try to educate him very well, and we will do everything he can so that we can follow the regulations. He said he used to own the Main Street Smoke shop and he never had any problems. He said that one week will really kill his business. He said anyone can come see, and due to Covid situation he is struggling, small businesses rely on cigarette sales. Mr. Keilty asked if the employee is a relative. Mr. Patel said no. Mr. Keilty said that is good because they can proceed with retraining. Ms. Redford told that with the new state law, the fines are very high, \$1,000, \$2,000, and \$5,000 for 1st-3rd offences. If this was under state law we would be seeing a \$2,000 fine and 7 day suspension. Everyone has been impacted by Covid, these businesses are considered essential businesses, they never had to close their doors, change in state law has changed the bottom line, but the state legislature has found it to be important enough due to lung diseases to impose these rules. Dr. Mansberger said that she believes we should stand by our regulations and that we need to stay consistent. Mr. Carli agreed and said especially since he has not been here for a year yet, and to see them coming back so quickly, he believes they should uphold the 7-day suspension. Mr. Durkin added that he is especially cognizant of the difficulties Covid has placed on our local businesses, and generally speaking Mr. Patel has a good reputation in this industry, but there is a problem at this store, and he thinks that a strong message has to be sent unfortunately.

Mr. Carli made a motion that the Board uphold the seven-day suspension for this violation. Dr. Mansberger seconded the motion. A roll call vote was taken and it was unanimously agreed to uphold the suspension. Ms. Cameron told Mr. Patel that it has been the practice of the Board to allow the retailer to select the seven-day period when the suspension will be held as long as it is within a reasonable timeframe ending before the next board meeting, and within a day or two let us know what time frame you decide, and all of the tobacco and nicotine products must be removed from the premises. We will confirm with a site visit, and you will not be allowed to return those items to the establishment until the seven days have been completed. Mr. Patel replied that he will contact her within a day or two to schedule the dates and will remove all of the tobacco products. Ms. Cameron thanked Mr. Patel, as did Mr. Durkin and Ms. Redford. Mr. Durkin closed the hearing at 4:55

Subject: Update on COVID-19 response actions -Testing opportunities

Discussion: Reviewed.

Subject: Update on COVID-19 response actions- Vaccination update

Discussion: Ms. Cameron explained that we are receiving a small grant from the Essex County Community Foundation to work on outreach to our underserved communities, so we are thinking of starting up an ambassador program, like those the state is supporting in some communities, including the Chief's Everett, where we hire vaccine champions from our community and send them out to churches and stores and social clubs to answer questions and to try to address people's concerns. We haven't received the funds yet but are beginning the planning, and will have the person they had previously hired to field covid questions, which have dropped off now, to coordinate it. She said that he will probably not be an ambassador since he is not from the community, but he will do

a good job of coordinating the outreach effort. She asked for the members to let her know if anyone has any ideas of people who might be good ambassadors.

Subject: Update on COVID-19 response actions - Data update

Discussion: Ms. Cameron shared information on the most recent Covid data for the city and region. She said that we are bouncing back into the red again, and our positivity rate keeps hovering around the 4% level, the cutoff for high risk communities, so even though our average daily incidence rate is moving in the right direction, our positivity rate is putting us in the red. She is concerned about our vaccination rates, which are improving, but we are still below the state average. Data for the state showed that over 80% of state residents over age 75 had been vaccinated whereas in Peabody only about 70% had been vaccinated. Overall about 46% of the eligible population has received one or more doses, so we are not quite up to half which is where the state is. The clinic that day was an example, seeing the demand drop off is of concern to us. It has been said that getting the last 10% of the population vaccinated will be harder than getting the first 90% vaccinated, so we have some work ahead of us. Mr. Durkin asked board members what they are seeing in terms of people around them and vaccinations. Dr. Mansberger said that she lives in a 55 and older community so everyone around her is getting the vaccine so she is not seeing people who are hesitant, but she understands that some are, and it is going to take people explaining and using the right words to explain it to people so that they understand. Mr. Carli said that 90% of the people in his department took advantage, and of those who didn't had claimed concerns about infertility. He added that with 90-% vaccinated, he has seen a steep drop off in cases among his staff. He has heard from two people who got Covid that they really wish they had gotten the vaccination. He told that at Everett's vaccination clinic they are seeing 400 or more people in a day. He said he'd love to see the state move these clinics around to communities with lower vaccination rates. Mr. Durkin told that he has 1200 people at his place of work and a large percentage who decline to get the vaccine, and we can't mandate it or discriminate. His policies were changed to only allow 1 person in a vehicle, so if there is a water main break or other emergency and six guys are going out they send six vehicles, and they would like to go back but they don't know who is vaccinated and who is not. Mr. Carli agreed and said he has seen the issue too. Ms. Cameron told that she has also heard about the concerns about fertility so we will be preparing to address that even though there are really no long term studies to support their side. She added that people are trying to push the limits on what they want to do as well, and street festivals and large gatherings are not allowed during this stage, and she has heard about some events being held that do not meet the guidelines and they are in a tough position telling people that these events that are in the advertising stage can not happen.

Subject: Additional Item: Discussion on whether to have hearings with the board for those applying for lifeguard variances

Discussion: Ms. Cameron told that the next meeting will be the last before Memorial Day so there will be a large number of applications for variances for pools which would take up a great deal of time. She asked if the Board felt strongly about having each applicant come before the board. Mr. Durkin suggested that Ms. Cameron handle this and if any do not appear to be complying, to have them come before them. Mr. Carli agreed, and suggested that, since there was a tragic incident not long ago at a pool, that the applicants should be more focused on making sure that doesn't happen anywhere else. Ms. Cameron replied that most other applicants probably do not know about that incident, and she doesn't believe there is any confidentiality requirements around this, so she and the inspector will be sure to bring home that message. Since there was no further items for discussion, Dr. Mansberger made a motion to adjourn, which Mr. Carli seconded, and all voted to adjourn the meeting.

Subject: Next Meeting May 13, 2021@ 4:00 p.m. Meeting Adjourned: 5:12 p.m.