

Town of Concord
Board of Health

Minutes of the Meeting
Tuesday March 21, 2017

PRESENT: Ray Considine, Chairman
Joanne DiNardo
Mark Haddad
Deb Greene, MD
Jill Block

Susan G. Rask, Public Health Director
Gabrielle White Public Health Inspector

OTHERS: Alice Kaufman, Select Board member and Board of Health liaison; Andrew Seidel, Interim General Manager, Colonial Inn; Daniel Landry Executive Chef, Colonial Inn, Cristina Faria, District Manager Dunkin Donuts, Mariana Medeiros, District Manager, Dunkin Donuts; Terri Ackerman, Finance Committee

1. Open Meeting

Chairman Ray Considine opened the meeting at 7:00 p.m. He introduced new Board Member Jill Block who has an extensive background in public health including substance abuse prevention, teen pregnancy, and women’s health and has served on numerous boards of non-profit agencies, as well as serving as the consultant for Healthy Concord project.

2. PUBLIC HEARING – Colonial Inn, Violations to Food Code

PHD Susan Rask opened the meeting with a brief background of the recent violations found at the Colonial Inn, as follows.

The Colonial Inn is a challenging food service facility to operate. The building is old; a major portion of the kitchen is located in a basement area that was never designed to be used as a kitchen and as such has many areas that are difficult to keep clean; and infrastructure such as plumbing, ceilings and floors are old and require constant maintenance and repair. Operating this food service facility requires much more diligence and effort than would be needed in a more modern facility. Over the years, there have been many episodes of non-compliance with Food Code requirements. Health Division staff has written many orders to correct violations and created work plans to assist the Inn in maintaining compliance. The Inn has been required to hire a food safety consultant several times in the past (under previous ownership) to develop training and plans for food compliance. Many of the present staff at the Inn were trained in proper food handling procedures during this time, but are not implementing these procedures at present.

The Inn was sold to its present owners in Summer 2015. Prior to the sale, Health Division staff worked extensively with the buyers to ensure they understood the challenges that operating the facility would entail. The Health Division required that numerous major and minor violations were corrected before the Permit

to Operate a Food Service Facility was granted to the new owners. The Inn operated under a temporary permit for approximately six months while major repairs were completed, before the full permit to operate was granted in January 2016. At that time, the facility was in compliance with all requirements of the Food Code and we were assured by Inn management that they understood the unique challenges of operating the facility and were up to the task.

On February 28, 2017, Health Inspector Gabrielle White conducted a routine inspection of the facility and found 10 Critical and 16 Non-critical violations. A lack of sanitary conditions was observed throughout the facility. Critical violations included failure to take food temperatures as required; provide sanitizing solution on the cook line; and operate the dishwasher with proper sanitizer levels. The extent and nature of these violations clearly indicate the Person In Charge (PIC) is not fulfilling his responsibilities under the Food Code for oversight of the kitchen (see enclosed Food Code Section 2-201 for PIC responsibilities).

A letter dated March 2, 2017 was sent to the Inn's owners ordering them to correct these violations and to appear before the Board of Health at the March 21 meeting (copy of letter enclosed in packet). Critical violations were required to be corrected within 24 hours and Non-critical violations corrected within 10 days. During this 10-day period, Gabrielle White visited the facility frequently to assure progress correcting the violations was being made. On these visits, new violations were observed, confirming the lack of active managerial control by the PIC.

Gabrielle White re-inspected the facility on March 10 to confirm that all violations found on February 28 had been corrected. At this inspection, 12 new Critical violations and 17 new Non-critical violations were observed. A letter dated March 13, 2017 was sent to the Inn's owners ordering them to correct these violations.

The lack of sanitary conditions, lack of facility maintenance, and inability on the part of Inn staff to exert active managerial control and proactively correct problems suggest that a food safety consultant is needed to work with the Inn to develop a plan of corrective action to ensure the facility will be operated in compliance with the Food Code.

Discussion

PHD Rask showed approximately 20 annotated photos which gave a visual representation of several of the critical violations where serious cross contamination could occur, lack of sanitary conditions and lack of maintenance and cleaning of the facility

Joanne DiNardo asked who oversees the cleanliness of the operation; Susan Rask stated that it was the Head Chef, Head of Maintenance and the General Manager.

Ray Considine noted that by his count there were 22 critical violations and 33 non-critical violations (a total of 55 violations) in a 10 day period and asked Mr. Seidel to present the Board with the Inn's side of the story

Andy Seidel stated that he was the owner's representative and speaking on their behalf. The general manager and the head chef had a responsibility to ensure compliance with the Food Code and they failed in

that responsibility. The Inn's former General Manager had been let go prior to these inspections but was negligent in many areas of maintaining the Inn. He admitted that there was a lack of oversight of the facility and trust was placed in onsite staff who did not fulfill their responsibilities. Andy Seidel explained that many of the kitchen equipment items that were in need of repair have already been repaired or replaced. Although Andy Seidel is the Interim General Manager, he explained he will stay on full time as long as is necessary, along with the newly hired General Manager who will be starting work the first week of April.

Chef Dan Landry said he has a strong restaurant background. He stated that in 2016 the Colonial Inn did over half a million dollars more in food sales than in 2015 and he did this by cutting costs and staff. The Inn is 5 times the size of an average restaurant and very difficult to manage. He is hiring a 30 hour per week staff member for just cleaning and no other duties.. He is also simplifying the menu, purchasing pre-sliced deli meats, and pre-made soups. He is making choices so that the kitchen is easier to manage.

Andy Seidel stated that the Inn has an appointment scheduled with an HVAC consultant to determine the cause and a remedy for the black soot that is coming from the air vents in the kitchen. He is also looking into a solution for the entire kitchen floor which is deteriorating. Andy Seidel said they were planning to replace the entire floor, and would like to request to delay this project until January 2018. The Board expressed concern with this time frame and felt it needed to be resolved more quickly. Mr. Seidel said without the full scope of work the Inn did not know what would be involved and said that their consultant would need to advise them on the depth of work to be completed. Money he noted was "no object".

The Board expressed concern about when the outstanding physical facility issues would be addressed as they create issues of unsanitary conditions in the food service operation. The Board also expressed concern that the HVAC system must be remedied as soon as possible and Andy Seidel thought that this could be addressed by April or May of 2017.

Chairman Ray Considine asked PHD Rask for her recommendations on how to proceed. Susan Rask offered the following recommendations:

Staff Recommendations

Staff recommends that the Colonial Inn be required to hire a food safety consultant who will assist in Inn in implementing a plan of correction and active managerial control. The food safety consultant shall:

1. In conjunction with the owner, supply to Health Division a list of all job titles and associated daily job duties.
2. Create customized list of cleaning tasks (using Restaurant Resource Master Cleaning Checklist as a template and customizing as needed), assign staff to each task, and create logs that staff will use to document that each task is performed.
3. Provide customized food safety and sanitation training to each staff member based on their job duties.

4. Teach active managerial control and role of Person in Charge to key staff members (head chef, other key kitchen staff and Inn Manager) and provide documentation of training to the Health Division.
5. Inspect weekly to ensure Active Managerial Control is occurring and that the facility is being operated in compliance with the Massachusetts Food Code.
6. Develop a maintenance plan and schedule for major equipment and infrastructure and verify compliance with plan.
7. Inspect the restaurant weekly and, based on any violations found, engage staff in remedial training as necessary to adopt proper food protection practices. All inspection reports must be forwarded to the Health Division.
8. Weekly inspections by contracted food safety consultant will continue until no violations of food code regulations have been found on 5 consecutive inspections.
9. After the period of weekly inspections has ended, the food safety consultant will continue to inspect the restaurant on a monthly basis.

Staff further recommends that the management of the Colonial Inn shall:

1. Assess compressors, flooring, walls, plumbing, ceiling, and all major pieces of kitchen equipment and develop a timeline for repair or replacement as needed.
2. Within 10 days of hiring a new staff member who works in the kitchen, certify to Health Department that new staff member has received training appropriate to their job position from the contracted food safety consultant. This training must occur in person; i.e. merely giving the written training manual for that job to the new employee will not be considered sufficient training.
3. Consider hiring an outside cleaning company to perform routine cleaning of the facility on a regular basis.

Health Department staff will continue to inspect on at least a monthly basis and will issue non-criminal citations for all violations of the Food Code that are found upon inspection.

If, within 3 months after the adoption of these requirements, or if the restaurant fails to show what the Board of Health considers to be adequate progress in meeting the requirements of the Food Code regulations, operation of the business will be deemed inadequate to protect public health and this will be considered as grounds for a hearing with the Board of Health for suspension or revocation of the restaurant's license to operate.

After further discussion, the Board's consensus was to require the Colonial Inn to hire a Food Safety consultant and all other requirements as outlined above; also the Inn must submit a written plan of correction for floor and HVAC system. This document should include an aggressive timeline for corrections.

Chairman Considine reiterated that the Board did not want to have to close the inn as they are an economic asset to the town but if they could not get corrective action quickly and operate in compliance the Board would take the necessary action and exercise closure if they deemed necessary.

Dr. Deb Green made a motion to adopt the recommendations above. Joanne DiNardo seconded the motion. The Board VOTED unanimously in favor.

3. PUBLIC HEARING – Request for Exemptions to Bylaw Prohibiting Polystyrene in Food Service Wares

Dunkin Donuts at 1643 Sudbury Rd, 1191 Main St, 117 Thoreau St., and 1089 Concord Turnpike.

Representatives for Dunkin Donuts, Cristina Faria, District Manager, and Mariana Medeiros, District Manager, were present. They requested an extension of time to comply with the Polystyrene Bylaw for two products: extra-large coffee cups and the lids that are used with these cups. Each franchise location must buy its approved, branded products from the Dunkin Donuts corporate supplier. The corporate supplier is working to find an appropriate replacement for these two items and Dunkin donuts expects to have these new items by April 2017. Ms. Faria stated that all other products are in full compliance.

After brief discussion, the Board felt that the efforts made to find suitable replacement items were sufficient and it was appropriate to grant the exemption for a period of one year, with an expiration of June 30, 2018.

Mark Haddad moved to approve the exemption requests; Joanne DiNardo seconded the motion. All VOTED in favor.

4. DISCUSSION—Board of Health and Health Division Responsibilities and Duties

Chairman Ray Considine opened the discussion by saying that, much of the time, the Board of Health has been seen as “reactive” to issues, for example, artificial-turf fields, polystyrene, bottled water, etc., rather than “proactive”. Therefore, he advised the Board that he would like to start a conversation on the best way to become a more “proactive” Board in addressing public health issues.

PHD Susan Rask provided the Board members (by email, prior to the meeting) with a copy of the MDPH *Manual of Laws and Regulations Relating to Boards of Health*. She also provided the Board with a copy of the *CDC Ten Essential Public Health Services*.

PHD Rask gave a PowerPoint presentation on the roles and responsibilities of the Board of Health and Health Division. She noted that most town health departments are solely funded by the town in which they serve; there is no state funding for a baseline level of services (as occurs in other states with regional or county health departments). Consequently, town health departments in Massachusetts are typically staffed only to be able to fulfill regulatory responsibilities. 75% of the Concord Health Division staff time is spent on mandated enforcement of the State Sanitary Codes, which include MDPH regulatory requirements for inspection of food establishments, camps, housing, isolation and quarantine, pools, and bathing beaches as well as DEP regulation which include septic systems and wells. 10% of staff time is spent on administration; 5% on crisis management (food borne illness, algae blooms at bathing beaches, emergency

housing violations etc.); and 5% on MDPH public health emergency planning efforts.. This leaves 10% of staff time available for response to emerging diseases (e.g. Ebola, Zika, avian influenza); issues that come before the Board such as water fluoridation, artificial turf, or the polystyrene bylaw; and proactive public health projects such as responding to the recent recreational marijuana legislation, substance abuse prevention, tobacco regulations, tick-borne illness education, sun safety programs and the like.

PHD Rask noted that the town is in the process of hiring a new Public Health Nurse. This position is shared with the Council on Aging but twelve hours per week will be devoted to public health efforts such as emergency planning, prevention of tick-borne disease, sun safety education, and possibly substance abuse prevention.

The Board will continue to review the time and resource limitations of Health Department staff when choosing proactive project to be undertaken on the Board's behalf. Both Deb Greene and Ray Considine expressed that they would like public health to be at the forefront of the community and thought a good way to do this would be writing newspaper articles on a monthly basis on issues relating to public health in the community.

Alice Kaufman suggested that this presentation be given before to the Select Board.

5. DISCUSSION -- Board of Health Position Paper on Substance Abuse Prevention for Town leadership (Items #5 and #6 were combined)

6. DISCUSSION –Marijuana Legislation

Deb Greene updated the Board with information relative to the opioid crisis and a brief update from the most recent Middlesex County District Attorney's task force meeting. She is also working with Emerson Hospital's EMS liaison to try and get the number of transports for drug overdoses to Emerson Hospital specifically from Concord. Deb Greene spoke to the impacts of opioid abuse and deaths recorded and frequency emergency responders administered Narcan. The information continues to be very sobering and Dr. Greene said she was very interested in taking this on as a Board issue to strategically work towards preventing additional deaths and keeping drugs out of children's hands. She reiterated that it was a horrific epidemic and wanted to stay ahead of this as much as possible. Board members agreed that is a top priority for Board and should be addressing the ongoing public health opioid crisis

Ray Considine brought information from the Cambridge Health Department which is using a systems-based approach towards reducing youth use of drugs. He shared the "The Strength of Cambridge Teens" flyer. Cambridge is trying to emphasize adolescent strengths as a means of working with youth and community groups to reduce substance use. Ray Considine emphasized that a systems approach will require us to enlist a broader stakeholder base which should include schools, police, and other boards and committees.

Jill Block noted that she recently concluded a project for the town of Belmont addressing youth substance use. She noted that data can be hard to assess as different sources are responsible for different types of data. For example, only unattended deaths are reported through the District Attorney's office. Reconciling different data sources, which are reported differently, and drawing conclusions from the numbers can be very difficult in a town with small numbers of deaths; i.e. a variation of 3 or 4 deaths can be significant in a town with smaller numbers whereas larger cities like Lowell can have this type of data variation without

confounding the impact of opioid overdoses and deaths. Susan and Jennifer Clarke plan to consult with Jill Block before proceeding with further data collection in Concord to help guide their process.

At the February meeting, Ray Considine requested that staff prepare a letter to be sent to State Representative Cory Atkins and State Senator Michael Barrett outlining the Board's recommended changes to the marijuana legislation and/or regulations. The draft letter was reviewed by the Board. The board does not support homegrown marijuana but feels the need for language that would reduce the number, if allowed, to 4 plants per household. There was concern about how these numbers would be enforced and who would enforce them. All members reiterated that they would rather eliminate homegrown completely. The Board also reviewed and approved the draft language pertaining to recommended changes to packaging of edible marijuana products; a recommendation to increase the level of taxation to cover the cost of regulating, enforcing, and monitoring the marijuana industry in Massachusetts, with a suggestion that a tax rate of 29% be imposed, similar to Colorado; a recommendation to designate a percentage of tax revenue to be spent on community education and prevention and to provide financial resources to monitor and research the impact of commercialization in Massachusetts; and a recommendation to allow law enforcement to arrest for public consumption of marijuana with a fine similar to that imposed for public consumption of alcohol.

Susan Rask will finalize the letter to include the edits suggested by the Board and send the letter by email to each Board member; once all have approved the final draft the letter will be sent to the legislators.

Deb Greene moved to send a letter with the approved edits to the state legislators; JoAnn DiNardo seconded the motion. All VOTED in favor.

Susan Rask discussed the marijuana legislation relative to the Town's need to vote to "opt-out" if the town does not wish to allow retail sale of marijuana. Susan Rask attended an informational meeting in February sponsored by the Norfolk County District Attorney's office. At this meeting, attorneys from Koppelman & Paige recommended a dual approach of holding both a local ballot referendum and a town meeting vote if a town wishes to "opt-out". Select Board member Alice Kaufman commented on whether the board should bring this for consideration at Town Meeting in April, because the warrant has been opened for a special town meeting. All concurred that it is better to wait and have more information. 2017 Town Meeting Article 39, Zoning Bylaw Amendment –Marijuana Establishment Temporary Moratorium, if passed, will place a temporary moratorium on the use of land or structures for "marijuana establishments" through July 1, 2018.

The zoning moratorium will give the Board time to clarify the legal requirements for a vote to "opt-out". If the town chooses to do this, Town Meeting vote can wait until spring 2018 Town Meeting. However, if there needs to be a local ballot referendum vote, this should be scheduled for the Fall 2017 election. The Board members agreed they should pursue a Fall 2017 ballot question. The Board discussed whether they wanted to make a formal recommendation to the Select Board for legal counsel to advise on crafting the a process for the town to "opt-out". Alice Kaufman recommended that the Board of Health make a presentation before the Select Board to discuss the issue and engage town leaders for creating ballot and Town Meeting warrant articles. The Board agreed this would be a good way to proceed.

7. Board Minutes and Calendar

Board members did not have time to review the minutes of the February 13, 2017 meeting and will approve them at the next Board meeting in April.

The next Board of Health meeting was scheduled for April 10. This date was chosen to accommodate school vacation week and Town Meeting which begins on April 24. The Board discussed finding an alternate date for the April meeting as new member Jill Block noted that it was a religious holiday Passover and she would not be able to attend. The Board requested that Karen Byrne look into alternate dates and agreed to consider moving the meeting to a time which was not on an observed holiday.

8. Staff Reports

PHD Rask reported that the FDA conducted a tobacco compliance check on January 12, 2017 at Concord Provisions and cited them for sale of tobacco to a minor under age 18.. This has been the only violation at Concord Provisions. The board discussed whether to consider FDA inspections as violations under which the Board of Health would take action. Susan Rask said that, in the past, the FDA violations have been reported to the Board but no action was generally taken because of time lags and the inability to verify who conducted the inspection, what product was purchased, purchaser's age etc. The Board determined that PHD Rask should make a site visit and speak to the business owner about the FDA compliance check results; no further enforcement action will be taken.

PHD Rask also reported that the most recent tobacco compliance check she conducted at Nine Acre Convenience had no violations of the Board of Health tobacco regulation.

9. Chairman and Board Member Reports

Ray Considine continued to give a brief welcome to Jill Block and said he believed she will be a great asset to the Board's commitment to coalition building. Jill's expertise with community planning, CHNA 15, Emerson Hospital and Mt Auburn Hospital, Planned Parenthood, Open Table and the Concord Public Schools Health Education Curriculum Review team will be in keeping with the Boards proactive approach to public health.

The meeting adjourned at approximately 9:30 p.m.

Board of Health
Signature Page
March 21, 2017

Respectfully submitted by,

Gabrielle White Public Health Inspector
Concord Board of Health

Susan G. Rask, Public Health Director
Concord Board of Health

Ray Considine, Chairman

JoAnn DiNardo

Deb Greene

Mark Haddad

Jill Block
