

BRAINTREE BOARD OF HEALTH

MINUTES

May 15, 2014

IN ATTENDANCE: Dr. Philip Nedelman, Chairman
Paula Dowd, Vice-Chairman
Dr. Arthur Bregoli, Clerk

ALSO PRESENT: Marybeth McGrath, Director of ML & I

Dr. Nedelman called the meeting to order at 7:00 pm.

MINUTES:

Motion By: Dr. Bregoli to approve the meeting minutes of April 17, 2014.
Second By: Mrs. Dowd
Unanimously Voted

NEW BUSINESS:

1) Public Hearing: Propose draft Rules & Regulations Governing the Sale and Distribution of Tobacco Products and Nicotine Delivery Products.

Dr. Nedelman advised that the hearing this evening is for the purpose of listening to public comment from any individual in the audience who would like to speak about the proposed draft Rules & Regulations Governing the Sale and Distribution of Tobacco Products and Nicotine Delivery Products.

Motion By: Mrs. Dowd to open the public hearing
Second By: Dr. Bregoli
Unanimously Voted

Dr. Nedelman advised those individuals in the audience that the public hearing is now in effect and the Board will be listening for five minutes to each speaker. Speakers will come to the table podium, sign in and state who they are representing.

Dr. Nedelman advised that the Board did receive four letters from:

- 1) John Howe representing the New England Service Station and Auto Repair Association;
- 2) NATO-National Association of Tobacco Outlets;
- 3) Retailers Association of Massachusetts;
- 4) New England Convenience Store Association.

Dr. Nedelman advised that the Board members may ask some questions, but have no opinion that they are going to mention tonight. Voting will be done at the next Board meeting on June 19, 2014. The Board will not make any decision at tonight's meeting, but will gain as many facts and listen to as many comments as the individuals in the audience may have.

Mr. Wadia Bitar from Hayward Market on Hayward Street advised the Board that the proposed regulation is going to be a problem for business in Braintree. If the Board increases the age to purchase tobacco to 21, it will kill the business. Everyone will go to Quincy, Randolph or Holbrook to buy. Braintree will lose all of the business.

He also expressed a concern about the increase in price for single cigars to \$ 2.50, and in Quincy they sell in for \$ 1.25, which will make customers go to Quincy.

For informational purposes, Dr. Bregoli asked if Quincy, Holbrook and Randolph are not at the age of 21 to sell tobacco products?

Mr. Bitar advised yes, and also Weymouth.

Mrs. Dowd advised that some of those towns are in discussion of the same.

Dr. Nedelman commented that Mr. Bitar said he will lose his business, but theoretically wouldn't he lose the business of those people between 18 to 21 years of age.

Mr. Bitar stated not only those individuals, and not only people that live in Braintree, but also people from other communities that he would not be able to sell to them.

Dr. Nedelman said that it would only be that age.

Mr. Bitar said yes.

Dr. Nedelman advised that the Board is also taking under consideration going to 19 next year, 20 the year after and 21 the third year. So, he advised that it is a fair assumption that some change is going to be made. The question is does the Board do it incrementally or go directly to age 21.

He advised that the regulations will not stay the same, as they are at present.

Mr. Bitar advised that the business will be killed.

Mrs. Dowd advised that between those ages, you will see most cities and towns going to this. It is on the horizon. Many are in the works, but just at different phases.

Mr. Bitar advised that if everybody goes to it, then that is a different story. All the towns need to do it at the same time, and then it would be fine. If it is only in Braintree, then it is no good.

Dr. Nedelman advised that it is being considered by the state.

Mr. Mohamed Iskandar from Seven Eleven on Commercial Street; and Boston Food Shop on Union Street and on Washington Street, advised the Board that if the regulation was a statewide change then it would not be a problem. But, being the first one to start it, establishments in Braintree will lose a lot of business. He estimates that 15-20% of his tobacco sales are to persons between the ages of 18 to 21. 15-20% is the cut off for him to be profitable, before he would have to close his shops.

The Seven Eleven on Commercial Street in Braintree that he owns, which is between Weymouth and Quincy does 40% in tobacco business. A lot of jobs would be lost, as well. He does not understand these regulations. At the age of 18, our kids can make a decision to go to war, but they cannot make their own decision to smoke or drink.

Mrs. Dowd advised that youth cannot purchase alcohol until they are 21.

Dr. Nedelman asked what Mr Iskandar thought about the incremental age increase from 19 to 21 over three years.

Mr. Iskandar advised that it is definitely better that going straight to 21.

Dr. Nedelman asked if he would have the same argument, would he not?

Mr. Iskandar advised that he would. He would like to see all the towns go to that. If it was a statewide change, then he would not have even come to this hearing. But, if it is only Braintree doing it, then it will hurt a lot of businesses.

Dr. Nedelman reviewed for clarification that Needham is 21, Brookline is 19, Belmont is 19, Watertown is 19, Westwood is 19, Sharon is 21, Walpole is 19, Arlington is 21, Canton is 21, Ashland is 21, Sudbury is 19, Dedham is 21, Dover is 21, Wellesley is 21 and Scituate is 21.

Mrs. Dowd advised that the other Towns around Braintree are also looking at this, and everyone is just in different phases.

Mr. Iskandar asked if the Board would they could line it up with Weymouth and Quincy.

Mrs. Dowd advised that no the Board does not have to wait for Weymouth, Quincy or Holbrook to make a decision.

Dr. Nedelman advised that the Board did not wait for those Towns for smoking.

Mrs. Dowd asked Mr. Iskandar what the percentages are for tobacco sales, as opposed to other retail sales he has.

Mr. Iskandar advised that in a convenience store at least 30 % is tobacco.

Dr. Nedelman advised that according to Mr. Bitar's testimony, establishments may lose perhaps 20% of that 30% that Mr. Iskandar stated. So, about 6%.

Mr. Iskandar advised the Board that they struggle each year to maintain the same average. 3 to 6% in a month and they struggle to pay the bills because you already set up your expenses based on the income that is coming in, so when sales go down you have to readjust. You end up laying off people, so you can offset the loss.

Motion By: Mrs. Dowd to recess at 7:13pm.
Second By: Dr. Nedelman

The Board resumed the public hearing at 7:15pm.

Mr. Michael Gardner, Jr., who owns three car wash/gasoline stations in Braintree under Super Shine Auto Wash and Penta G Corp. advised the Board that he does understand the struggle with tobacco sales. Everyone in the room knows that smoking is not good for you. He does not smoke. However, he does believe that there should be some freedom of choice and the age right now is 18 to purchase tobacco. Those that choose to smoke will smoke. They will still choose smoke wherever they can get the tobacco product. So, he does not know if limiting in the town of Braintree is going to have the desired overall health effects that the Board is looking for. Maybe they will and maybe they won't.

He advised that tobacco sales are important not just for the raw sale of the product, but the ancillary products that go along with it. They do not have c-stores, they have kiosks and the number one item they sell is tobacco. Their customers come and get \$ 5.00 worth of gas and two packs of cigarettes. If they have to make a decision of where to buy their tobacco products, they can very easily choose a town where they are going to be able to buy the products legally. So, he does believe they will lose sales on the tobacco product, as well as gasoline sales and on the car wash. He is uncertain of what the percentage will be, but stated that there will be some impact. As they reduce revenues, the money has to come from somewhere or they have to reduce services. There will be impact to the Town of Braintree and there will be impact to the businesses.

Mr. Gardner advised that the second point he wants to make is in the enforcement. It is tough right now to get a part-time 16 to 17 year old. They do regular training and the WE card program. He has been before the Board to get his hand slapped in the past because they could not perform with the 18 year olds, and now are we asking a 17 year old kid to be responsible to try and figure out a 21 year old adult. To card the 21 year old, or 22 year old, or 25 year old, or 30 year old or 35 year old or what age. It is difficult to get kids for entry level \$ 8.00 an hour jobs to enforce the rules even at the age of 18.

Mr. Gardner asked if there is any way as this goes forward to move some of the responsibility of enforcement of selling the tobacco products, and bring some level of financial responsibility onto the attendant, the person who is actually selling the

cigarettes. Bring them in here, and that person is the person that needs to be enforcing against, in addition to the business. He said as he read the regulation, the penalties are very severe. He does not believe that the regulation is enforced correctly. He asked if the Board is going to do this in addition to the business, can the attendant be involved and have them be financially responsible for participating in this increased age bracket and getting them more engaged in the process.

Dr. Nedelman advised that the penalties in this proposed regulation are exactly the same as in the current regulation.

Dr. Nedelman advised that he has seen Mr. Gardner before the Board in the past, and he knows that it can be difficult to train attendants to make to have them card the customer and make sure they are 18. The other option is to train them to card customers for purchase at age 19 one year, 20 the second year and 21 the third year. Dr. Nedelman asked if that wouldn't be even more logistically difficult, than if the Board decides to increase it to 21 across the board?

Mr. Gardner advised that he thinks it can be argued both ways. He feels that he will have to get the 17 year old kid to ID at a higher level, say 40 or 50.

Mrs. Dowd advised that she thinks anyone purchasing cigarettes should have to show ID. If the attendants carded everyone purchasing tobacco, then no one would have a problem. No one would ever be before the Board for a violation.

Dr. Nedelman advised that the current age requirement for carding is 27 years old.

Mr. Gardner advised that he and his management staff have tried to educate the employees. He advised that he does not smoke, and he is not one saying that smoking is healthy or good for you. However, if an individual chooses to smoke at age 18, then he does not see why they have to leave the town of Braintree to purchase cigarettes.

Dr. Nedelman advised that Dr. Lester Hartman, a pediatrician spoke before the Board in March or April, and he is very active throughout the state. Dr. Hartman mentioned from a neuro-scientific standpoint a relatively small percentage of smokers begin after the age of 21. Further, that the brain of a 18 and 19 year old can become addictive to nicotine at a much lower rate or amount than an older 21 year old. In other words, the brain is still maturing and is very sensitive to nicotine. Additionally, most of the kids in high school now, 16 through 18 years old, are getting their cigarettes from kids that are between 19 and 21 years old. Those are three basic facts.

Dr. Nedelman advised that there is no argument that smoking is harmful. The Surgeon General determined this. As a Board, the member's job is to reduce that risk in the general population. How the Board goes about it, is the reason everyone is here tonight.

Mrs. Dowd advised that one of the problems is that a lot of adolescents are beginning smoking late middle school to early high school age. They are getting the 18 year old to

buy it. They are not going to ask a 21 year old to buy it. They are going to ask a fellow student who is 18 years old to buy the cigarettes for them. Raising the age will cut the available use for younger children because they are not going to be able to get their hands on cigarettes.

Dr. Nedelman advised that no one has said anything about the e-cigarettes. He advised that this proposed regulation also includes the nicotine delivery products.

Mr. Gardner advised that he does not sell them.

Mr. Iskandar advised the Board that if an 18 year old has already started smoking, then if this regulation goes into effect we will not be able to sell him cigarettes, so is he going to quit or go to a town that can sell the cigarettes to him?

Mrs. Dowd advised that hopefully they will quit.

Mr. Iskandar advised someone that is allowed to smoke now, how are we going to stop them?

Mrs. Dowd advised that the sooner they stop smoking the easier it will be for them to stop, as opposed to when they are 30 and then try to stop. It is much harder when they have already been smoking for ten to fifteen years.

Dr. Nedelman advised that it is a terrible addition. He asked Mr. Iskandar if he smokes now or ever has smoked?

Mr. Iskandar advised that he does not smoke now, but did in the past.

Dr. Nedelman asked how he quit?

Mr. Iskandar did not respond.

Mr. Gregory Zoll advised the Board that he represents W.M. Zoll and Sons, a distributor of convenience store products in Braintree, including tobacco products.

He advised the Board that he is not going to address the legitimate concerns raised by the business owners that have previously spoken. He is more curious about some of the anticipated outcomes and some of the statistics that did not make it into the graphs. Such as, the comment by a board member that an underage potential smoker is not going to seek out the help of a 21 year old to obtain tobacco products. Does the Board have any statistics that speaks to that statement or that individuals are getting cigarettes from 18 to 21 year olds?

Dr. Nedelman advised that there are statistics noted on the proposed regulation.

Mr. Zoll advised that he has seen other towns in Massachusetts enact similar rules. Does the Board have any feedback, in terms of how successful enacting these types of rules has been in curbing underage smoking?

Dr. Nedelman advised yes, and are part of the regulation. Those towns that have instituted a higher age there has been a significant reduction. Greater than half, more like a third of high school students, who prior to 18 were smoking and then when implemented to 21, dropped down to almost a third of the kids that were original smokers.

Mr. Zoll asked what is the long term goal?

Both Dr. Nedelman and Mrs. Dowd replied, stop smoking.

Mr. Zoll advised why doesn't the Board just recommend outlawing tobacco sales to all ages completely?

Dr. Nedelman advised that he is not sure that the Board can do that legally.

Mr. Zoll asked if that is something that the Board can look in to?

Mrs. Dowd advised that it is not something that the Board has discussed or even considered. They were considering going up to 21, as they know the brain is more developed than someone who is 16, 17, 18 and even 19 years old. The brain does not fully develop until the age of 26, so the Board should be moving it to 26. Individuals are legally able to drink at the age of 21, so the Board was moving smoking to the same age of 21. Where you can legally drink, you can legally smoke at 21.

Dr. Nedelman advised Mr. Zoll that CVS is going to stop selling all tobacco products on October 1, 2014.

Mr. Zoll advised that yes, CVS is a for profit business and they made a business decision. He further advised that he does not believe that the Board's goal is to affect business, but rather the concern is public health.

Dr. Nedelman advised yes.

Mr. Zoll advised that he not sure that the business decision by CVS relates to the public health issue.

Dr. Nedelman advised that CVS expects to realize a decrease in gross product sales.

Mr. Zoll advised that is true, but he also feels that they expect to realize an increase their services, particularly those mini-clinics. He also asked what the thinking is to limit the number of tobacco and nicotine delivery products sales permits in town?

Mrs. Dowd advised that this limit is not changing and is in the current regulation.

Ms. McGrath advised the Board that the limit is the same in the current regulation, and the number of permits issued annually has never exceeded the allowable in the fourteen years she has been with the Town.

Mr. Zoll asked what supporting information or statistics the Board has to outlaw the sale and distribution of blunt wraps.

Ms. McGrath advised the Board that within the proposed regulation blunt wraps will be prohibited. Blunt wraps are tobacco wrappers that are used to make cigarettes. When the Board was considering this portion of the regulation, often times what has been brought to their attention is that blunt wraps are not only used for cigarettes, but also for other items which are not always legal items.

Mrs. Dowd advised that statistical information is located in the youth risk behavior survey located on the Mass.gov site. There has been a rapid increase in the use of blunt wraps over the years by youth for cigarettes and other illegal purposes.

Mr. Zoll asked what the percentage is of people using blunt wraps for legal purposes, as compared to people using them for illegal purposes?

Mrs. Dowd advised that she does not have that data. But, she knows that it is being used for illegal purposes.

Mr. Zoll advised that there are a lot of things in the proposed regulation that he likes. More specifically, he agrees that no one under the age of 18 should be getting a tobacco product. But, folks that are of age making an adult decision whether or not it is currently healthy or unhealthy for them are making the decision. If the Board is not sure how much of an issue a blunt wrap is then why would the Board be enacting rules to completely outlaw the sale of them.

Mr. Zoll advised that for most adults that use tobacco products, it is generally know that to a large degree these folks are in a lower income bracket and often times seek out lower end or discounted priced tobacco items. By outlawing the sale of a cigar under a certain value, the Board is making it more difficult and impacting a higher percentage of the income of these businesses.

Dr. Nedelman asked if Mr. Zoll is suggesting not outlawing the sale of cigars at that price, but he is not addressing at all the age.

Mr. Zoll advised that he would say it is against the law for a store to sell to an underage person. It is against the law for a non-guardian, non-parent to provide tobacco to someone who is underage. We need to do a better job to enforce the law without doing undo damage to businesses.

Mr. D.J. Wilson advised the Board that he is the Tobacco Control Director with the Massachusetts Municipal Association. He provided the Board with updated statistical data lists, and said these are evolving lists as they change daily. He did gather a list of

questions that previous speakers had and would like to offer information to the Board on those questions.

The first list is cities and towns that have expanded their regulation to include e-cigarettes and other nicotine products that are not tobacco.

The second list includes those cities and towns that have raised the minimum age to purchase tobacco. The age 21 effort is not officially sanctioned by the Department of Public Health, but there are now 25 cities and towns that have gone beyond that minimum age and the reasons are basically because if you get it to 21, there are very few if any 21 year kids in high school, so it will not be giving to friends. It also matches the age to purchase alcohol. As a note, in Brookline this is a town bylaw, which must be approved by the Attorney General. The Attorney General did approve this bylaw for Brookline to increase the purchase age to 19, which indicates that she found a level of constitutionality in doing so. It is going pretty well, with a good number of them going into effect on July 1, 2014. Most notably, we will see New York City going from 18 to 21 on May 19, 2014. The trend has been to jump up from 18 to 21, if the Board does decide to go to 21. Needham and Arlington did do the three year step up process. The state does provide free signage also. Needham has been in place for nine years now, and there have been no lawsuits against Needham. He has no data on them.

Mr. Wilson also advised the Board that the four letters they received are standards letters received from the four professional trade associations. He has no data from these trade associations indicating that there has been any adverse effect in the Town of Needham. Needham is the only place in the United States that had this in effect for a long time before the Town of Sharon's went into effect last year.

The next list is on minimum pricing of cigars. The public health reason they did that is that Boston started the ball rolling and it has been in place now for two years. Their data and state data showed that kids were getting these very cheap cigars more than they were using cigarettes, partially because they come in flavors where cigarettes do not except for menthol. Also, a pack of Marlboro's averages around \$ 9.30-\$ 9.60 statewide. So, for 69 cent you can get a chocolate cigar. This is what Boston was aiming to get at, and this is what the other 50 cities and towns on this list have done, as well. It has been in place for two years and they have smoothed out some confusion with retailers, but now 50 cities and towns have done it. All chains should have no trouble understanding this if they have been effected somewhere else. Data evaluation of the City of Boston is underway now.

Mrs. Dowd advised that the cigars are clearly marketed to children.

Mr. Wilson agreed, and advised that we do not want this to be an entry level way for our kids to get involved in nicotine addiction through cigars and blunt wraps.

Mr. Wilson advised that a blunt wrap is a sheet of reconstituted tobacco, almost always comes in a flavor, and is almost always used for drugs. He advised that he did not have

any data on this, but we could speak with the Police Chief to see if the police department has any data.

Blunt wraps are a big item for kids. Boston banned blunt wraps, at the same time that they banned the sale of tobacco in health care facilities, pharmacies and educational institutions. They got sued on the banning of blunt wraps. The suit went to the state's highest court and the City of Boston won. So, this is the legally safest thing to do is to ban blunt wraps. It is still a decision for the Board of Health to make, but legally it has been vetted through the highest court.

The next handout is a list of those cities and towns that have limited the number of tobacco sales permits. The idea here is to control for the density. This is already done for liquor stores. The state controls their density. So, this is one way for every corner to not have four tobacco vendors on it. It has been seen over the years that in almost every city and town, the number of permits has gone down even if there has been an increase in population.

Mr. Wilson advised that limiting the number of tobacco sales permits is a decision made by a city or town. In the case of Braintree, within the current Board of Health Rules & Regulations Governing the Sale and Distribution of Tobacco Products, and in the draft proposed regulation, it limits the number of sales permits to 50. So, the Board of Health will allow 50 retailers. If 50 permits were issued, and someone came in tomorrow, then their choice would be to be placed on a waiting list, until a sales permit became available. Just like for a liquor license.

The last handout is a list of those cities and towns that have banned Roll-Your-Own machines. These are \$ 30,000 machines that roll a carton of cigarettes in 10 minutes. There is a loop hole, in which the feds got rid of them as a favor to Philip Morrison, but there is a little loophole for private clubs. So, he is asking that cities and towns get rid of that loop hole so it does not exist.

Ms. McGrath advised the Board and Mr. Wilson that there are no Roll-Your-Own machines permitted in Braintree.

This allows for those Roll-Your-Own machine for people to buy for their home use, but disallows a store from opening it up and having someone make a carton of cigarettes.

Mr. Wilson advised that in Massachusetts there are no cities and towns that ban tobacco sales altogether. There are dry towns for alcohol in Massachusetts, so it is conceivable that it could happen. However, it is not a recommendation now statewide.

With regard to electronic cigarettes, it wouldn't be a problem if it wasn't \$ 7.00 and in a flavor. But, the industry pushes those boundaries all the time, so their only way to help is to react.

Mr. Wilson also commented about fining attendants, as a previous speaker had requested. He is only aware of a handful of towns that still have that on the books, but none of them actively enforce it as far as he knows.

This issue is more a business decision, as far as what an owner wants to do regarding an attendant that may have sold a tobacco product to a minor. If they want to let go of the clerk, fine or penalize the clerk, or reward the clerk that is their business decision.

Mr. Wilson advised that at a state level, their data shows that a 16 year old male clerk will sell tobacco to just about anybody. He advised that some cities and towns have a requirement that the minimum clerk age be 18.

Motion By: Mrs. Dowd to close the public hearing.
Second By: Dr. Bregoli
Unanimously Voted

Dr. Nedelman advised that the Board of Health will be discussing this matter and taking a vote on the proposed draft regulation on June 19, 2014.

Motion By: Mrs. Dowd to adjourn the meeting at 7:45 pm.
Second By: Dr. Bregoli
Unanimously Voted