

**BOARD OF HEALTH  
MINUTES OF MEETING  
OCTOBER 2, 2019**

**PRESENT:**

Glenn M. Monterio, Member  
Catherine Phinney, Member  
Thomas L. Gleason, M.D., Associate Member  
Lawrence Perry, Associate Member  
Robert M. Ethier, Director  
Patrick MacDonald, Inspector  
Suzanne Burke, Recording Secretary

**EXCUSED:** Amy Wiegandt, M.D., Chairman

**In the absence of Dr. Amy Wiegandt, Chairman, Member Glenn Monterio made a motion to move Member Catherine Phinney to Chairman and move Associate Member Dr. Thomas Gleason to a voting member. The Board agreed to move Catherine Phinney to Chairman and Dr. Thomas Gleason to a voting member during the October 2, 2019 meeting. All in favor. 3-0-0.**

**4:30 p.m.      Signing of Minutes- August 7, 2019**

The minutes of August 7, 2019 were read and accepted.

**On a motion of Glenn Monterio and seconded by Catherine Phinney, the minutes of August 7, 2019 were read and accepted. All in favor. 3-0-0-**

**4:35 p.m.      10 Progress Avenue, John Spink/Spink Design- Variance Request to Local Regulations**

Mr. Spink did not appear. Mr. Spink sent Mr. Thomas Roux to appear in his place. The Board did not hear the request as the engineer was not present. A professional engineer or registered sanitarian must appear with the designed plans. The hearing was postponed until the next meeting.

**4:10 p.m. Cape Cod Tobacco Control- Mr. Robert Collette & Mr. D.J. Wilson Discussion**

Cape Cod Director Mr. Robert Collette and Mr. D.J. Wilson Tobacco Control Director of the Massachusetts Municipal Association appeared before the Board for discussion on the tobacco regulations/ language. At the August 7, 2019 meeting, Mr. Collette suggested setting a cap on the number of tobacco "smoke-adult only" establishments. Mr. D.J. Wilson presented two updates that would "tighten up" the requirements and the Board could add to the regulations. (See attached) After discussion, it was agreed the Board will place on a future agenda to "tighten up" the language in the local regulations.

**5:00 p.m. New England Smoke Shop- Mr. Amine Nassif- Discussion**

As the result of the August 7<sup>th</sup> meeting being tabled to a future meeting, Mr. Amine Nassif and Attorney Brian Corey, Jr. appeared before the Board to continue the discussion of the permits required for the New England Smoke Shop. The question on the table: Is the business is to operate as a smoke shop or as a general retail food store. (See attached minutes of August 7<sup>th</sup>).

**Audio taping failed. The hearing is postponed until the audio is repaired. Mr. Ethier will continue with the Health Agent report.**

**Health Agent Report- Director Robert M. Either reported. See attached.**

**5:00 p.m. Continued (New England Smoke Shop) - Audio is repaired**

After review of regulations, permits held by New England Smoke Shop and lengthy discussion with Attorney Corey and Mr. Nassif, the Board decided they are staying with their original decision. The owner, Mr. Nassif will have to determine whether he is going to operate as a smoke shop or a convenience store. The Board has been enforcing these regulations and will continue to enforce. Mr. Ethier suggested the Board allow Mr. Nassif to continue with his 2019 permit giving him more time to remove items from the establishment (if continuing as a smoke shop) then renew the 2020 as a tobacco shop or a general retailer. The Board agreed. Attorney Corey stated, the business was purchased as a small business and Mr. Nassif is trying to make a life for his family. We will oppose this decision to the best of our abilities. This is not a wide spread regulation. Mr. Corey thanked the Board for their time and expressed he looks forward to hearing from town counsel.

**5:15 p.m. Mr. Sean Michael Murray-Public Health Emergency Planner-Discussion**

Mr. Murray appeared before the Board to introduce himself as the Town of Wareham Public Health Emergency Planner. Mr. Murray discussed the function of

the Emergency Preparedness Planner. The function of the Public Health Emergency Preparedness (PHEP) Planner is to ensure a minimum readiness level in the event of a Public Health Emergency within one or multiple municipalities within Region 5C of Massachusetts. The PHEP Planner provides support to the Local Public Health (LPH) Officials to ensure the following: Participation of State Sponsored Drills, including but not limited to WebEOC drills, Incorporation considerations of at risk populations into community level plans, using the C-MIST framework, Updating sections to the EDS Plan, Updating the 24/7, Supporting LPH Officials acquire ICS 100, 200, 700, 800 certifications, Support Public Health Officials attend the Local State Advisory Committee (LSAC), Increase information sharing and mutual air resources relation to at-risk population.

Mr. Murray thanked the Board for their time and welcomed the members to contact him at any time if further information is needed. The Board thanked Mr. Murray.

**HEALTH AGENTS REPORT-** Director Robert M. Ethier reported. See attached.

**OLD BUSINESS-** No old business discussed.

**NEW BUSINESS-** No new business discussed.

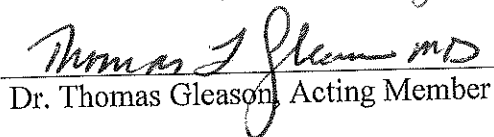
**On a motion of Catherine Phinney and seconded by Glenn Monterio the meeting was adjourned at 5:45 p.m. All in favor. 3-0-0**

Respectfully submitted: Suzanne Burke

Signed and dated: November 6, 2019

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Glenn M. Monterio, Member

  
Catherine Phinney, Member

  
Dr. Thomas Gleason, Acting Member

## ATTACHMENT: Minutes of August 7<sup>th</sup> (NEW ENGLAND SMOKE SHOP)

4:45 p.m. New England Smoke Shop, Amine Nassif- Discussion

Attorney Brian Corey Jr., of 1041 Main Road, Westport, MA 02790 appeared before the Board with Amine Nassif, owner of New England Smoke Shop. In behalf of Mr. Nassif, Attorney Corey, Jr. is arguing the right to sell tobacco and convenience store products in the establishment known as New England Smoke Shop, located at 3088 Cranberry Highway, East Wareham, MA.

Mr. Nassif was approached by Cape Cod Tobacco Director, Mr. Robert Collette and was informed he was not allowed to sell certain products in his tobacco shop. Mr. Collette stated "also while inspecting the establishment, a young man who was not of legal sales age walked into the New England Smoke Shop with his father". No minors are allowed in a tobacco store. Mr. Collette stated the definition of a retail Tobacco Store: **"An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Wareham Board of Health."**

Attorney Corey, Jr. stated "Mr. Nassif has a permit to sell Retail Food Service items from the Board of Health thru the previous owner." Mr. Collette explained he is not allowed to sell cat litter and many other items that are for sale in the tobacco store. The items in the establishment are convenience store items.

After lengthy discussion, the Board agreed New England Smoke Shop will have to follow the rules and regulations like every other smoke shop in town. Attorney Corey, Jr. said if the Board does not agree to let the establishment continue the food service sales, his client will pursue the decision further.

The Board agreed if Mr. Nassif does not want to follow the regulations then Attorney Corey and Mr. Amine Nassif should formally submit their rebuttal. The Board tabled the hearing until further notice. Mr. Ethier will inform Town Counsel. The Board agreed they need to review the regulation language with Mr. Collette and D.J. Wilson, Tobacco Control Director, Massachusetts Municipal Association. Mr. Collette suggested setting a cap on the number of "smoke- adult only establishments". Mr. Collette and Mr. Wilson will check their schedules and try to meet with the Board again on September 18, 2019.

5:00 p.m. Signing of Minutes- July 17, 2019.

The minutes of July 17, 2019 were reviewed and approved.

On a motion of Catherine Phinney and seconded by Glenn Monterio, the minutes of July 17, 2019 were accepted. All in favor. 3-0-0-

# Municipal Tobacco Control Technical Assistance Program

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## MEMORANDUM

**TO:** Wareham Board of Health  
**FROM:** D. J. Wilson  
**RE:** New England Smoke Shop  
**DATE:** November 6, 19

I understand that there are still some difficulties surrounding whether New England Smoke Shop's business is in compliance with the conditions in the Retail Tobacco Store definition found in the current regulation.

This has been happening statewide with increasing frequency, especially now that the state's Food Code allows stores to sell pre-packaged food without a local retail food permit. For your review are two updates that would "tighten up" these requirements and address attempts by current general tobacco vendors to open a Retail Tobacco Store within their premises. I plan on attending your October 2<sup>nd</sup> meeting regarding this issue.

### UPDATE TO ADULT-ONLY RETAIL TOBACCO STORE DEFINITION:

#### **CURRENT:**

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Wareham Board of Health

#### **PROPOSED:**

An establishment that does not share space with another business, that shall have a separate public entrance, that does not sell food or alcohol, that does not have a restaurant license or lottery license, whose only purpose is to sell or offer for retail sale tobacco products and/or tobacco product paraphernalia, in which the entry of persons under the age of 21 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products from

the [city/town] Board of Health and applicable state licenses. Entrance to the establishment must be secure so that access to the establishment is restricted to employees and to those 21 years old or older. The establishment shall not allow anyone under the age of 21 to work at the establishment. As of the effective date of this Regulation, no new Adult-Only Retail Tobacco Stores shall be located within [DECISION: 25 to 500] Feet of a retailer with a tobacco product sales permit.

#### **POSSIBLE ADDITIONS TO CAPPING POLICY IN SECTION E.10:**

A dual cap would limit the number of Retail Tobacco Stores in town. One outcome would be that Retail Tobacco Stores currently enjoying the exemption from the Flavored Tobacco Product Sales Restriction Policy, and with this cap be among a select few to take advantage of the exemption, would need to declare whether they will be in compliance and continue with the exemption or give up the exemption in order to serve as a convenience store.

**Dual Cap:** At any given time, of the allowed Permit number in subsection (a) above, there shall be no more than [number (XX)] Tobacco Product Sales Permits issued to Adult-Only Retail Tobacco Stores, per the definition, in [city/town]. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated as a first-time permit applicant. **NOTE: This would provide a maximum number of permits within the general cap number that can go to qualifying "adult-only Retail Tobacco Stores (which includes both tobacconists and vape shops).**

Your current regulation should have the paragraph below. We recommend it in any form of tobacco product sales permit capping.

**Required Paragraph:** Applicants who purchase or acquire an existing business that holds a valid Tobacco Product Sales Permit at the time of the sale or acquisition of said business must apply within sixty (60) days of such sale or acquisition for the permit held by the Current Permit Holder if the Applicant intends to sell tobacco products, as defined herein. Such applicant may choose to apply for a Tobacco Product Sales Permit for an Adult-Only Retail Tobacco Store if the Current Permit Holder possessed the same or if a Tobacco Product Sales Permit for an Adult-Only Retail Tobacco Store is available per subsection (b).

**NOTE: This provision should be included no matter which of the above five options are used by a board of health. It permits a buyer to "capture" the seller's permit regardless of the type of capping policy enacted.**