

Tompkins County Board of Health
October 25, 2022
12:00 Noon
Virtual Meeting via Zoom

Approved 12.6.22

Present: Christina Moylan, Ph.D., President; Susan Merkel; Shawna Black; Melissa Dhundale, MD; Edward Koppel, MD; and Samara Touchton

Staff: Claire Espey, Director of Community Health; William Troy, County Attorney; Holly Mosher, Deputy County Attorney; Frank Kruppa, Public Health Director; Harmony Ayers-Friedlander, Deputy Commissioner; Skip Parr, EH and Ted Schiele, HPP

Excused: David Evelyn, MD; and Ravinder Kingra

Guests: Fernando Aguirre, Owner of Old Mexico; and Gladys Aguirre

Call to Order: Dr. Moylan called the regular meeting of the Board of Health (BOH) to order at 12:00 p.m. Dr. Moylan stated that the BOH agenda was updated to include a Review of the Proposed ATUPA Penalty Policy under Administrative Actions. She reorganized the agenda to first discuss the violations related to food, the proposed ATUPA penalty policy and finally the enforcement action related to Dream Vape for consistency.

Privilege of the Floor: Mr. Fernando Aguirre, Owner of Old Mexico restaurant was present. He addressed the Board about the violations he received. He stated that with a high turnover in staff it was hard to keep on top of everything and has brought his wife Gladys Aguirre on board to help manage. He said they purchased a new refrigeration system which has been switched out and regularly monitors the holding temperatures. He stated that there was difficulty getting parts to make repairs and is hopeful of the newly trained kitchen staff. Mr. requests a reduction in the \$2,800 violation fee.

Approval of the September 27, 2022 Minutes: Ms. Black moved to approve the September 27, 2022 minutes, second by Dr. Dhundale; all were in favor as written.

Financial Summary: Ms. Grinnell Crosby was not present. Mr. Kruppa was available to respond to any questions.

Administration Report: Mr. Kruppa shared that in working with Cornell University's MPH program and the various efforts including COVID and to help gather data, the potential for establishing a more formal relationship to create an Academic Health Department (AHD) has been discussed. Discussions with Gen Meredith, Associate Director of the MPH at Cornell have been ongoing for the last five years but were amplified by COVID. It is a model used around the country with three in New York State listed below.

- Monroe County Department of Public Health with University of Rochester
- New York City Department of Health and Mental Hygiene with Columbia University
- New York State Department of Health with SUNY of Albany

AHD partnerships help to strengthen the links between public health practice and academia and to lessen the separation between the education of public health professionals and the practice of public health. AHDs can serve as sites for joint education, faculty, research, and practice. They enable the practice and academic

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communities to work together to develop the current and future public health workforce and build the evidence base for public health to better deliver the Essential Public Health Services.

The MOA would be between the department and the university and would look into opportunities for funding, grants, and other resources.

Mr. Kruppa responded to Ms. Merkel's question about projects with other schools as part of student coursework. He said, "Yes, especially during the pandemic with former and current students as fellows. The hope is to build a mechanism where the university works with us, helps identify projects and builds systems for a quality and successful relationship.

Ms. Black asked that the issues of animal testing, brought forth by Peta against Cornell's veterinary school must be resolved before moving forward into a partnership.

Dr. Moylan believes this partnership will strengthen the community and asked for an exploration of the differences, strengths/weaknesses between the previously used Public Health Institute model and this one being discussed; also coordinate with Ithaca College which has an undergraduate public health degree program; and tie together undergraduate and graduate interest in public health. Mr. Kruppa agreed. Dr. Moylan added that TC3 be included as well.

Health Promotion Program Report: Ms. Hillson welcomed Amber Munlyn, Health Educator for the Healthy Neighborhoods and Tobacco-Free Communities Grant Programs. Ms. Munlyn will meet tomorrow with the Cortland team, who holds the advancing Tobacco-Free Committee Grant. Ms. Hillson welcomed newly hired Emma Abby, Community Health Worker Supervisor for the Perinatal and Infant Community Health (PICH) Grant. Ms. Hillson reported that opioid-related updates have been added to their report.

Medical Director's Report and Discussion: Dr. Klepack was not present.

Division for Community Health (DCH) Report: Ms. Espey had nothing to add to her written report and was available to answer any questions.

Children with Special Care Needs Report: Ms. Thomas was not present.

County Attorney's Report: Mr. Troy had nothing to report. He introduced the new Deputy County Attorney, Holly Mosher.

Community Mental Health Services Board (CSB) Report: Ms. Ayers-Friedlander reported that the CSB met on October 3rd and discussed the 2023 Local Services Plan. The plan focused on areas of workforce recruitment, housing crisis services, and cross-system services as the State is pushing to reduce barriers to care. The plan also focused on non-clinical supports that look at the social determinants of health, better understanding and prioritizing the work of peers, and addressing health equity. With the Local Services Plan moving to a four-year model, the CSB and its subcommittees look to incorporate their work with the TCHD's plan.

Environmental Health Report: Ms. Cameron apologized for the late submission of the proposed penalty policy and felt it appropriate for the Board to discuss it today but to wait on any actions after the Board can review it thoroughly. She said that Grassroots was sent a revised stipulation agreement giving them the opportunity to waive some of their proposed penalties if they met certain milestones and signed off by November 3, 2022.

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Ms. Cameron clarified that an administrative hearing is held if the facility does not sign a stipulation agreement, or if an action might result in their closure or suspension. The usual stipulation process requires no hearing officer reports. The county attorney, deputy county attorney, EH representatives and witnesses are present in an administrative hearing, depending on the enforcement action. Mr. Kruppa added that the administrative hearing is a recommendation to the Board and is not a final decision. The Board does not have to agree with the administrative hearing officer.

Resolution #EH-ENF-22-0022 – Serendipity Mobile Food Truck, T-Ithaca, Violation of Subpart 14-4 of New York State Sanitary Code (Food) Dr. Dhundale moved to accept the resolution as written; seconded by Ms. Merkel.

Ms. Cameron reported that this is a case of not maintaining food at the proper temperatures during hot holding and the stipulation agreement was not signed resulting in an administrative hearing. EH proposes a fine of \$200.

No discussion.

The vote to approve the resolution as written was unanimous.

Resolution #EH-ENF-22-0029 – Ko Ko Restaurant, C-Ithaca, Violations of Subpart 14-1 (Food) Dr. Koppel moved to accept the resolution as written; seconded by Ms. Black.

Ms. Cameron reported that this is a case of not maintaining food at the proper temperatures during cold holding and there are requirements included for other violations observed. EH proposes a fine of \$200.

Discussion: Ms. Merkel questioned the food safety training recommendations. Ms. Cameron explained that the recommendations were based on previous inspections where a number of violations were cited.

The vote to approve the resolution as written was unanimous.

Resolution #EH-ENF-22-0032 – Ithaca Ale House, C-Ithaca, Violations of Subpart 14-1 (Food) Dr. Dhundale moved to accept the resolution as written; seconded by Ms. Black.

Ms. Cameron reported that this is a case of not maintaining food at the proper temperatures during cold holding and requirements are included for other violations observed. EH proposes a fine of \$200.

No discussion.

The vote to approve the resolution as written was unanimous.

Resolution #EH-ENF-22-0034 – Old Mexico, C-Ithaca, Violations of Subpart 14-1, and Violation of BOH Orders # EH-ENF-21-0022 (Food) Dr. Koppel moved to accept the resolution as written; seconded by Ms. Merkel.

Ms. Cameron reported that this is a case of recurring issues with refrigeration storage, not having thermometers and not maintaining temperature logs. EH proposes a fine of \$2,800.

Discussion: Ms. Cameron confirmed that this case follows the Food Enforcement Penalty procedure.

The vote to approve the resolution as written was unanimous.

Administrative Actions:

Review of Proposed ATUPA Penalty Policy – Dr. Moylan referred to draft ATUPA Penalty Policy included in the packet. Dr. Dhundale moved to accept the resolution as written; seconded by Ms. Black.

Discussion: Ms. Cameron said, in light of the increased violations for the sale of flavored vapor products, EH needed to develop ATUPA penalty policies for consideration and seeks recommendations from the BOH.

- The penalties for the sale of tobacco/vapor products to individuals under 21
- A flexible policy with equitable penalties for various situations

Ms. Cameron explained that these ATUPA penalty policies are similar to the food enforcement policies that adhere to the law. The penalties are based on the varying situations currently being addressed and include the consideration of financial gain in Tompkins County.

Mr. Parr explained that a referral to the Department of Taxation and Finance (DTF) for license suspension will be made if a facility gets to three points for underage sales. The facilities license will be suspended by DTF for one year; a facility with four cited violations in a three-year period can also be referred to DTF for suspension. Mr. Parr said EH is evaluating the system and working internally on tracking violations better.

Dr. Moylan referred to the draft and suggested clearer language before Table 2 to state that combined violations are to be assessed similarly to the point assessment to produce similar outcomes.

Ms. Black believes these facilities should be shut down after the second violation, stiffer fines, and stronger enforcement for non-payment of fines. Mr. Parr said EH does not issue or hold the facilities' licenses and has no mechanism to close them down. He said that if penalties are not paid, a referral is made to the county attorney. Deputy County Attorney, Ms. Holly said the county can bring an action against the facility and sue them for unpaid fines and penalties.

Dr. Dhundale agreed with Ms. Black and cited data from a short-term study (2012 to 2013) from the CDC website on flavored vapes. She said that the harm and damage to the children in our community are everlasting and there should be no empathy for the facilities that sell these products to our children.

Dr. Moylan recommends more discussion on the logic of charges with edits to the second part of that paragraph. She clarified with EH on what is law and what flexibility the Board has in regard to the point assessed column. Mr. Parr added that the Board also consider the 60 retail facilities that sell cigarettes or tobacco in terms of operations.

Board Discussion:

- Remove policy referencing a hearing officer's recommendation and edit to be consistent with tables
- TCHD recommended penalties be increased to the maximum for each violation
- First violations based on the penalty by individual packet
- All violation levels at the maximum of \$100 per individual packet of flavored products sold
- Increase second violations for the BOH order violations to \$1,500
- Increase third violations for the BOH order violations to \$2,000

Dr. Moylan said that this discussion will be tabled pending a revision from TCHD.

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Resolution #EH-ENF-22-0025 – Dream Vape, C-Ithaca, Violation of BOH Orders # EH-ENF-22-0008 and Article 13-F of New York State Public Health Law for Sale of Prohibited Flavored Vapor Product and Underage Sale of Tobacco Product (ATUPA) Ms. Merkel moved to accept the resolution as written; seconded by Ms. Black.

Mr. Parr summarized the Dream Vape orders:

1. Owes \$2,500 from a previous resolution that is due November 11th and will be referred to the County Attorney for collections if not paid.
2. Pay \$2,750 for the sale of a vapor product to a person under the age of 21, due December 15th
3. Pay \$27,050 for selling prohibited products and having more than 670 flavored vapor products containing nicotine available, due December 15th
4. Prohibit the sale of tobacco and vapor products to people under the age of 21
5. Prohibit the sale or other provision of flavor vapor products containing nicotine with the exception of tobacco to anyone
6. Prohibit the use of price reduction instruments or other means of charging less than a vapor product's listed price
7. Post and maintain a sign that customers can easily see that reads:
"SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWERED TOBACCO, SHISHA OR OTHER TOACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA TO PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW".
8. Comply with all the requirements of New York State Public Health Law, Article 13F

Discussion: BOH recommendation of amendments of above resolves

1. No discussion
2. No discussion
3. The BOH recommends increasing the penalty to \$67,000, plus \$100/packet, plus the \$250 surcharge, plus \$1,500 for violation of BOH orders.
5. No discussion
6. No discussion
7. No discussion
8. No discussion

The vote to approve the amended language was unanimous.

The next meeting is Tuesday, December 6th, 2022 @ Noon.

Adjournment: Adjourned at 1:40 p.m.