

**Braintree Board of Health**  
**Johnson Meeting Room, Town Hall**  
**1 John F. Kennedy Memorial Drive, Braintree MA**  
**Thursday, July 19, 2018, 7:00 p.m.**

**IN ATTENDANCE:** Dr. Arthur Bregoli, Chairman  
Dr. Philip Nedelman, Vice Chairman  
Laurie Melchionda, Clerk

**ALSO PRESENT:** Marybeth McGrath, Director of ML & I

Dr. Bregoli called the meeting to order at 7:00 p.m.

**Approval of Meeting Minutes:** June 14, 2018

**Motion By:** Dr. Nedelman to approve the meeting minutes of June 14, 2018

**Second By:** Mrs. Melchionda  
**Unanimously Voted**

**List of Complaints:**

The Board reviewed a list of complaints received from June 11, 2018-July 13, 2018.

**Old Business:**

1) Request for keeping of chickens: 108 Cedar Street (Update)

Carol Reynolds, the applicant, was present. Ms. McGrath stated that Mrs. Reynolds has been before the Board at both the May and June meetings, as this matter has been continued.

The Board had requested that the following conditions be met before granting this permit: That no sanitation issues exist on the property; that the chicken be removed, which it was; that the property be fully fenced with a stockade fence, which it has; and that she engage with pest control services for both her property and her neighbor's property at 50 Pleasant Street, which she has.

Ms. McGrath advised that Mrs. Reynolds has provided the Board with the most recent pest control report, which indicated there was no rodent activity observed. Ms. McGrath also visited the site and found no problems on this property or the neighboring property. She also provided photographs of the 7 foot stockade fence which has been installed.

Dr. Nedelman stated the original concern with this request was rats and he asked if it is known where they are coming from. Mrs. Reynolds stated she asked the pest control

company and they stated that rats exists everywhere, deep burrowing underground, and have been seen in Braintree when areas are disturbed by things such as road work or construction. She stated she believes her problem originated from recent storms where large trees were uprooted.

Dr. Bregoli commended Mrs. Reynolds efforts and felt that the Board’s conditions had been met. Ms. McGrath stated she has spoken to the Mahoney’s of 50 Pleasant Street and they are in agreement that the Board’s conditions have been met.

**Motion By:** Mrs. Melchionda to approve the keeping of chickens at 108 Cedar Street for a maximum of six chickens.

**Second By:** Dr. Nedelman  
**Unanimously Voted**

**New Business:**

2) Sale of Tobacco Violation: Granite Package Store, 729 Granite Street

Ms. McGrath advised the Board that on Tuesday, June 19, 2018 and Wednesday, June 20, 2018, the tobacco compliance officer, Jerry McLaughlin, conducted compliance checks at 31 licensed establishments in town. Of the 31 establishments, one was found in violation, which was Granite Package Store. Ms. McGrath read from the compliance check report, which indicated that the minor buyer when attempting to purchase cigarettes, was not asked their age or asked for an ID and was able to purchase cigarettes.

Carl Johnson, attorney representing Granite Package Store, addressed the Board. He stated the owner was not present when the sale was made. This is their first offense and the statute requires a \$100 fine and five day suspension from the sale of tobacco products, and merchant education training. Ms. McGrath stated the merchant education program for all employees must be conducted within 30 days of the first day of suspension and will be conducted by the compliance officer. Mr. Johnson indicated there were currently no tobacco products in the store.

**Motion By:** Dr. Nedelman to suspend the license for the sale of tobacco at Granite Package Store from Friday, July 20, 2018 at noon through Wednesday, July 25, 2018 at noon.

**Second By:** Mrs. Melchionda  
**Unanimously Voted**

3) Review of Draft Regulation Restricting the Sale of Tobacco Products:

Ms. McGrath read aloud the public hearing notice which was published in the Braintree Forum on June 28, 2018; July 5, 2018; and July 12, 2018.

Ms. McGrath reviewed the proposed changes:

1. Prohibiting the sale of flavored nicotine delivery products in retail establishments with customers under the age of 21.
2. Lowering the maximum number of allowed license from 50 to 40.
3. Capping the allowed number of vape shops at 2, which is the number of shops currently operating in the town.
4. Excluding new retail establishments that sell these products from opening within 500 feet of a school or educational institution.
5. Excluding retail establishments that sell these products from opening within 500 feet of an existing establishment which has a tobacco sales license.

Ms. McGrath stated if the Board approves the cap on permits, the number would drop from 50 to 40. If establishments were to close they would have to return their license and that would reduce the cap. If an establishment sells to another entity they could transfer their license but would have to come before the Board for that to happen.

Dr. Bregoli opened the hearing to public comment.

Dennis Lane, Executive Director of the Coalition for Responsible Retailing, addressed the Board. He owns a convenience store in Quincy. He stated the important issues are how to keep tobacco products out of the hands of those under the age of 21 and how to protect adult's rights. He stated he has been a retailer for 44 years and 40% of his sales are tobacco products. He stated the retailers are the gatekeepers for sales and the compliance rate in Braintree is high. He stated most small stores hire from within the community. There is a concern about vaping in the schools which is resulting in discussions about restricting sales of flavored products. He stated the reality is that the youth are not getting these products at stores, but rather from older peers or through the internet, and other communities have implemented flavor restrictions, however, the rate of vaping is still up. He asked the Board not to punish the retailers by implementing these restrictions.

Dr. Nedelman asked how changing the age for the sale of tobacco products to 21 would affect the income of the average retailer. Mr. Lane stated it would be a loss of 5 to 10%, however, he has no problem with leveling the playing field and having an age restriction of 21.

Dr. Bregoli asked that those present who wish to speak sign in and their comments will be limited to 5 minutes.

Jon Shaer, Executive Director of the New England Convenience Store & Energy Marketers Association, addressed the Board. He stated convenience stores are part of the solution, not the problem. They implement software and technology in their stores to prevent youth from accessing these products. He stated in Braintree there has been a 95% compliance rate dating back to January 1, 2016. 127 communities across the Commonwealth have adopted similar regulations and none of them can site evidence that these restrictions have had an effect. He stated these restrictions are not going to stop underage persons from obtaining products on the internet and communities should be

looking for solutions that will actually move the needle. He asked the Board to delay a vote and research what has worked and not worked in other cities and towns.

Dhruv Patel addressed the Board. He stated stores are proud to be on the frontline of keeping tobacco out of the hands of minors by checking IDs and refusing sales to minors. He asked that they be treated the same as other responsible retailers who sell age restricted products. He stated this is not going to help and will only hurt their business.

Bobby Patel addressed the Board. He spoke against this regulation. He stated his business depends on the sale of flavored products. He stated he will not be able to pay his rent or pay his employees.

Jim Foley addressed the Board. He stated he is a longtime Braintree resident and is involved in the tobacco industry and is here representing himself and the customers he has in Braintree. He stated this is the retailers livelihood and they are not trying to sell to minors. He stated a lot of customers who purchase flavored products are adults and if this ban takes effect customers will most likely stop in another town to purchase their gallon of milk and flavored products. He stated when he was on the Youth Hockey Board it was the retailers who made donations to the program. These same people donate for veterans causes and if they chase their profit away they will not be able to continue to do this. He stated far more of these products are being accessed through the internet than what these stores are able to sell. He stated the sale of these products produces tax revenue for the state and the town. When they are purchased on the internet there is no tax charged. He expressed dismay at the fact that this state just legalized marijuana and the Board is worried about flavored tobacco.

Mohamed Iskandal addressed the Board. He stated he has been in business in Braintree for 20 years. He stated the Board raised the age to 21 four years ago and it did nothing. He stated a customer who was 19 came in and he told him he could not purchase tobacco products and he ended up going to Weymouth. Now it is the same thing with flavored tobacco. He does not see how this is going to stop youth from smoking, or trying to smoke, or getting it from the internet.

Alexander Weatherall addressed the Board. He stated he owns a store in Sherborn, which has an age 21 restriction and bans flavors. He stated 20% of Americans smoke and this is an important part of their income. He stated there comes a point where you cannot take puritanism and do damage to a specific cohort of business people. He stated we may not like smoking but this is America and if you limit the sales in one area they are going to get the product somewhere.

Dr. Nedelman stated the statistic being used that 20% of the population are smokers is incorrect, it is 14-15%. He stated the purpose of the Board of Health is to try to get people to not start smoking to begin with. He asked for suggestions on how they could do that.

Dennis Lane responded that there are no purchase and possession laws for tobacco. He stated it all comes down to holding people responsible for their actions.

Dr. Lester Hartman addressed the Board. He stated the Governor is probably going to be signing into law the bill raising the age of tobacco sales to 21. He stated he has been to 169 meetings similar to this and expressed concern with the rate of vaping in his patients. He stated everyone says they are going to go out of business, but D.J. Wilson has reported that not a single convenience store has gone out of business restricting flavors. He is seeing kids vaping insanely and this product is sold at all convenience stores. He stated 90% of tobacco use in children is flavored. He provided statistics to backup up his statements. He stated Juul and other products are adolescent nicotine initiation addiction devices. He stated he is not here for the economics, he is here for the children.

Lyn Frano, Substance Use Prevention Coordinator for Braintree, addressed the Board. She stated she agrees with Dr. Lester Hartman, who is a pediatrician who started the Tobacco 21 movement and sees everyday what these vape products are doing to children. She stated these vape products are relatively new and she is not sure if compliance officers are looking for sales of these products specifically so they do not know what the compliance rates are. She stated access and availability is what keeps these products out of the hands of young people. Braintree spent over \$9000 this year for education in the schools for students and parents. She stated the use of traditional tobacco products decreased over the years due to the education programs and limiting access and availability and not showing this is a social norm has decreased the use of tobacco products by young people. She stated education is not enough and they need to limit access and availability. Not all communities in Massachusetts use Youth Risk Behavior surveys so they do not necessarily know where the kids are accessing these products, it could be online or in stores.

Mary Cole addressed the Board. She stated she is the Program Coordinator for the Greater Boston Tobacco Free Community Partnership. She stated she supports this regulation because it protects kids from these tobacco products, especially with the current vaping epidemic. She stated tobacco is the leading cause of preventable death in Massachusetts, the United States, and the world. When kids walk into convenience stores and see all these products it totally normalizes it for them. She stated this is about exposure to these products. Currently vaping is everywhere. It is in schools and classrooms and students are calling the bathroom the Juul room. She stated this is also all over social media and this is one way Braintree can reduce their exposure. She stated a survey was conducted by the Truth Initiative which found that 74% of kids under the age of 18 bought these products from visible retail locations, 52% from social sources and 6% from the internet. She provided the Board with information and stated that policies are a really important piece to reduce this public health epidemic.

Sarah McColgan, Director of the Tobacco Control Program for the Massachusetts Health Officers Association, addressed the Board. She stated she is in support of these regulations. She stated the tobacco industry has been playing a game for years of blaming the addict. She stated they are not banning the sale of these products in

Braintree, they are asking to restrict the sales to adult only establishments. She stated the FDA has been asked to ban mail order vape sales. The discussion always comes back to profit versus public health and as public health professionals they are always concerned with public health. She stated local and state data does show that the flavored sales restriction does work. She provided materials for the Board. She referenced a previous speakers comments (Dennis Lane) about the police enforcing purchase and possession laws and stated they can talk about a million things that are not healthy for people but they are here tonight to talk about tobacco regulations.

Dennis Lane asked for a chance to rebut Ms. McColgan’s statements. He stated he has never advocated that young people who smoke or vape should be subjected to criminal consequences. He advocates for parent notification and education. He stated people expect purchase, possession and use laws to be enforced with alcohol use in minors.

Mouquesh Patel, resident and business owner in Braintree, addressed the Board. He stated a lot of the data presented in support of this regulation is not correct. He is here against banning of flavored cigars.

Dr. Bregoli announced the public hearing is now closed to comment.

Ms. McGrath stated all establishments that sell tobacco were notified of this meeting and were sent a copy of the public hearing notice, as well as the draft regulation. Included in the Board’s packet is a letter of review from the town solicitor, who feels the proposed regulations are within the broad authority of the Board of Health, he just made some minor adjustments to language in specific sections. She stated she has been working with this Board for 18 years and attributes the high compliance rates to the strict regulations the Board has enforced.

Dr. Nedelman asked that the Board take this under advisement, continue this agenda item until the August 16, 2018 meeting and consider a vote at the meeting next month.

**Motion By:** Dr. Nedelman to continue this item and vote at the next meeting on August 16, 2018.

**Second By:** Mrs. Melchionda

**Unanimously Voted**

**Other Business:**

Ms. McGrath provided an update to the Board on the Skyline Apartments court case. She advised that the Town has an active case in Quincy District Court, in conjunction with the Attorney General’s office for active housing code violations at Skyline Apartments. At present, air conditioning violations exist, as well as others in dwelling units on the property. The housing code does not specifically require air conditioning, but it does require that if the equipment is there it has to properly function. Also, within their lease agreements air conditioning is a provided amenity. Many units there do not have air conditioning and they were in court as recently as yesterday, and the judge has

ordered that Ms. McGrath do as many inspections as she can and provide him a status of the air conditioning and other violations by the next court date of August 1, 2018.

She also advised that the attorneys for the ownership must provide a short-term and long-term plan as to how they are going to rectify this. Another thing being considered is an abatement to the rents of the residents who have been affected going back to the end of May 2018 or the first part of June 2018. She stated they are proposing putting in portable temporary units. She stated the ownership has been stepping up lately. They have a new management company that has been in place since January 2018. However, they have no capital. Receivership is still an option that is on the table.

Dr. Nedelman asked for an update on Motel 6.

Ms. McGrath stated the final review of the case by the Superior Court has been bumped until August 2018, but so far all of the decisions have been upheld in favor of the Town.

Dr. Nedelman asked for clarification on the tobacco regulation discussed during the public hearing. He asked if they were making changes to the restriction of sales to those under 21.

Ms. McGrath advised that is not affected, they are just considering restricting sales of flavored products to only establishments where persons age 21 and older can enter, of which there are two in Braintree.

Dr. Nedelman stated that this would impact the person who is over 21 from buying flavored products.

Ms. McGrath emphasized that the youth are getting these products. She stated Braintree High School made national news due to the problem with vaping.

Dr. Bregoli stated he agrees this is a difficult decision because you cannot purchase these products until they are 21.

Dr. Nedelman asked if flavor makes that much difference.

Mrs. Melchionda stated she feels it does, as they are very impressionable. Dr. Bregoli wondered if it is impressionable by seeing the product or impressionable because they taste it.

Ms. McGrath advised the Board to have no further discussion on this matter until the next meeting because the Board continued the matter and the public should be present.

Ms. McGrath advised the Board that they are doing very well with beach testing to this point.

**Motion By:** Mrs. Melchionda to adjourn the meeting at 8:40 p.m.  
**Second By:** Dr. Nedelman  
**Unanimously Voted**