



BOARD OF HEALTH Joint Meeting with Select Board

Town of Nantucket
3 East Chestnut Street
Nantucket, Massachusetts 02554

www.nantucket-ma.gov

Commissioners: Stephen Visco (chair), Malcolm MacNab, MD, PHD (Vice chair), James Cooper, Meredith Lepore, Melissa Murphy Select Board

Staff: Roberto Santamaria, Artell Crowley, Kathy LaFavre, Anne Barrett, Hank Ross

~~ MINUTES ~~

Thursday, July 30, 2020

This meeting was held via remote participation using ZOOM and YouTube,

Pursuant to Governor Baker's March 12, 2020 Order Regarding Open Meeting Law

BOH called to order at 2:00 p.m. by Mr. Visco

Select Board called to order at 2:00 p.m. by Ms. Hill Holdgate

Announcements

Staff: Libby Gibson, Town Manager; Santamaria, Health Director; Amy Baxter, Police Department

BOH Members: Stephen Visco, Chair; Malcolm MacNab, Vice chair; James Cooper; Meredith Lepore; Meredith Lepore; Melissa Murphy

Select Board: Dawn Hill Holdgate, Chair Select Board; Melissa Murphy; Jason Bridges; Matt Fee; Kristie Ferrantella

Town Counsel: John Giorgio, K&P Law, P.C.; Gregg Corbo, K&P Law, P.C.

Documentation: COVID-19 Enforcement Plan; photo of risky behavior

I. PUBLIC COMMENT

None

II. BUSINESS

A. COVID Update

1. **Santamaria** – Regarding metrics, everything is green across the board; positive test rate has dropped to below 1%. Surfside Treatment Plant testing was down last week; waiting for this-weeks report. Cases are up to 4 as off today; pointed out there are a lot of people on Island at this time. We are doing better than the State and the Cape. A number of businesses are voluntarily closing early; we are seeing that after people leave is when we see “risky behavior” after people are getting inebriated and gathering in groups.

MacNab – With the governor’s new order and the testing capability, he’s hearing people say they will get tested when they get to Nantucket; asked if the Hosp is anticipating an increase in testing.

Santamaria – People who want to get tested should be making appointments now. Go to Town of Nantucket website and click on the COVID-19 Information then click on COVID-19 testing on the right. If you’re asymptomatic and not on the appointment list, the Hospital will turn you away. We don’t foresee an overflow where they Hosp won’t be able to handle it.

Fee – A friend in Real Estate said they are advising clients from out-of-state to get tested at home and bring that documentation with them because they are not going to quarantine.

B. Review of Enforcement

Discussion **Baxter** – The order from the governor is unclear how it will be enforced. When they fill out the travel form, people are asking who gets it and what’s done with it. Another question is if they get tested and can’t get the results, are they supposed to quarantine until they do get the results. Lastly the question is what we as a community will be doing regarding oversight and enforcement.

Santamaria – The travel order goes to the State Department of Public Health (DPH); it is to be forwarded to their final destination. This doesn’t go into effect until August 1. Businesses are suggesting that their clients make copies of the travel order and have it in hand. There is an

advertisement for a temporary night shift inspector to ensure people are complying with the quarantine.

Gibson – She’s been trying to find out what other Towns are doing; no one is actively doing this. Towns aren’t expected to enforcement; perhaps a temporary inspector could also go to lodging groups and look at the ledgers. Mass Travel form is not public information; presumable it goes to the contact tracing agency.

Hill Holdgate – Within the real estate business, this information has gone out to all tenants. It’s being well received; people want to be in compliance and glad for the option to being quarantined.

Murphy – We are experiencing the same thing at our office. Suggested something go out to restaurants and lodging about Health Department expectations.

Fee – The way the order is written, short-term rentals are required to report out-of-state tenants. There is also a link to all state Boards of Health to report violators.

Gibson – She wouldn’t characterize it as no one wants to enforce it; but the Governor’s order specifically states DPH is enforcing the order and will request help from the local BOH.

Ferrantella – She understands the order to be that the DPH will be monitoring to ensure people are quarantining the will contact the local BOH about non-compliance.

Corbo – The order is clear enforcement is delegated to the DPH with the assistance of local BOHs. His recommendation is if the Town receives non-compliance notice from its inspector, the Health Department should inform the DPH, so they can take necessary action.

C. Review of Inspection Report (7/26)

Discussion

Baxter – Reviewed the COVID-19 Enforcement Plan. The goal is to work toward compliance. Police are called only if public safety is threatened. The enforcement authority should allow 24 hours for businesses to make changes to be in compliance; there is escalation of enforcement. Explained who is on the Inspection Team and that inspectors are out daily and what is on the inspection checklist. Provided a snapshot of documentation and reporting of complaints; going to try to centralize the reports through her office.

Ferrantella – With the types of complaints, the policy starts with a verbal reprimand; asked if the next night the same business has a different violation does that count as another verbal reprimand or go to the next level of a written notice.

Baxter – At this point, they have been fully informed and that would be a second violation. The violations are “COVID related”; everyone so far has been working to clear up the issue.

Bridges – Agrees with Ms. Baxter’s approach and that two can happen in one night.

Fee – When there’s a presence, people are following the rules; if there is no presence, people aren’t following the rules. The businesses and customers know what is wrong and having a presence is important to ensure compliance. Tracking the notices is very helpful and important and wants the Town to be more proactive.

Ferrantella – Data helps track where and when more violations are happening.

Baxter – We are trying to centralize that as well. The “messier” parts are the lines and late-night crowds.

Santamaria – He does lunch inspections every day of the week at random hours. John Hedden does his inspections as well. There is more compliance during the day; more than 75% of people are wearing masks; we are seeing problems mostly at night.

Murphy – It might be helpful to report back to the Select Board not only the list of violations but also the times of inspections with general observations and number/type of warnings issued.

Corbo – The importance of record keeping is when the season is over, the SB can look at which license holders had violations or citations. Under the State Alcohol and Beverages, COVID violations could be actions against liquor licenses.

Discussion about the advantages of having an enforcement report and data on a spreadsheet.

D. Review of Case Status

Discussion

Santamaria – There has been a lot of conversation about how many of the 40 cases are active; we only have about 7 active cases right now. We are tracking all of them. We run into problems with contact tracing when new cases don't want to answer the questions; we call them back until they answer the questions. I don't want to give out information by which the person could be identified. Just because someone was positive doesn't mean they are active now.

Bridges – Asked why they come off the list.

Santamaria – Usually when they become negative, sometimes they go back to their home state. If their test comes back positive after they leave, it is no longer active, but we do the contact tracing and transfer to their local BOH.

Fee – We've exported some cases, asked how those are handled and if Mr. Santamaria is in contact with other BOHs.

Santamaria – All numbers we receive, we count it in the event they got it here. We counted a case as ours because the person came here after the test back home, which came back negative. We are in conversation with BOHs in other states.

Murphy – As of today, our status is manageable and positive in that we've got a low number of active cases currently. She continues to struggle with the number of cases overall; suggested a metric that measures tests and infection rates, so we can see a weekly percentage as well as the number of cases per population.

Santamaria – He can look into ways to do visualizations; currently tests are about 2% of the population; the number of cases is less than 1%.

MacNab – It would be interesting to see the percentage of the population per week. In a summer population, 1 per day isn't much.

Bridges – That 1 per day isn't much because of the contact tracing in place and working with the hospital, etc.

Visco – We can keep it that way as long everyone follows protocols. Everyone he saw in Town the other day was wearing masks and avoiding groups.

E. Review of Restaurant/Food Service Hours

Discussion

Santamaria – What we're seeing is restaurants are voluntarily closing early though the times aren't consistent. The problem restaurants want to close early.

Baxter – She has a dozen correspondence from restaurants about closing early. The "bar scene" is not safe right now.

Visco – Asked if the question is a curfew order.

Santamaria – He wants to look into that. Asked Town Counsel if the BOH has the authority to close food-service establishments at "X" o'clock; he'd recommend closure around 11:00 or 11:30 p.m.

Corbo – If we're talking about issuing an Island-wide order that all food-service establishments close at a certain time, it's his opinion that is within the general regulatory authority of BOH under Ch. 111 §31&122 to prevent nuisances and prevent sickness. You have to demonstrate the order is reasonable expected to protect public health. There is a distinction between requiring restaurants to close at a certain time and a curfew, which requires everyone to be off the street at a certain time; a curfew has more stringent standards.

Murphy – She said at the last Select Board meeting, she said she supports this. Her decisions are based upon Mr. Santamaria's recommendations. She feels we are working with a lack of personal responsibility and how we enforce that; bad behavior is individuals after they leave a restaurant. In the interest of public safety, she supports early closure in conjunction with enforcement and transparency.

Baxter – The State Order says people should be seated and drinks must be in conjunction with a food over; it is important to tie into food service. If they are open, food service should be available.

Cooper – Asked if this is directed at all food services whether or not they Have a liquor license.

Santamaria – Yes, it would prevent a roving group of people. Though it might push some groups to house parties, it still mitigates the risky behavior.

MacNab – As Ms. Murphy said, lot of this is personal responsibility. He doesn't want to do this, so we feel good but that we are making a difference. A restaurant is a regulatory environment where a home party is not; he's not sure this will make a difference.

Santamaria – Provincetown has had this in place for a while; there are other municipalities have this in place.

Hill Holdgate – She wants people more spread-out as we go into our three busiest weeks. She feels last call at 11:30 p.m. makes a lot of sense.

Baxter – It's later at night when there is no food service and people are getting more aggressive.

Fee – Agrees with Ms. Hill Holdgate. Asked if this means Cumbies, etc.

Santamaria – Cumbies and Stop & Shop are retailers that happen to have food service within them; they would be exempt. You might see some people show up to get food at mid-night, but their food service is closed by then.

Ferrantella – Most people are doing this on their own; she's concerned about mandating the extra layer. Agrees with Ms. Hill Holdgate on last call at 11:30 and see how it goes for a couple of weeks. She would like to require no drinks without food service. Would like to see the Town help with testing restaurant employees; it would be a way to keep our community safe.

Cooper – Asked if people along the strip could stay open.

Santamaria – No, those are food-service establishments. Repeated only Cumbies and Stop & Shop would be exempt.

Bridges – He's not seeing any metrics that this downtown risky behavior is leading to increased cases. Thinks the night inspector is a great idea but would like to know what he could do outside of Town.

Santamaria – There have been some cases that can be identified to risky behaviors downtown; the number is less than 5.

MacNab – If less than 5 out of 40 cases, that is a significant number.

Santamaria – That is 10% of our 40 cases.

Bridges – He doesn't know if those number will go down if they can transfer their parties to houses or beaches.

Santamaria – We have been seeing if parties tend to be with friends or the same social circle; you thus run less of a risk of exposure.

Murphy – Some of what we're seeing isn't inappropriate behavior at restaurants; she's getting feedback that it's when people leave one restaurant and go to have fun at other establishments. It's later at night when we see the riskier the behavior. There is no possible way to enforce what happens between leaving a restaurant and a person's final destination. She supports a safer atmosphere in Town late at night.

Cooper – By shutting things down early, we are putting them on the street an hour and a half earlier and once there we can't control what they'll do.

Ferrantella – She feels that by not closing early, we are also putting undue burden on the restaurants to keep the community safe.

Fee – The longer you go, the more people make bad decisions. A lot of people are asymptomatic and don't present; we don't catch those. If we have 5 cases, he wonders what that actually represents. He supports last call at 11:30 p.m. with closure at mid-night. We will get pushback.

Giorgio – He would encourage the boards to look at this from the perspective of not only the people in the bar but also someone who wants to have a nightcap and might be at risk and if that a legitimate public health concern.

Cooper – Doesn't think it is fair to force businesses that don't serve liquor to close; the restaurants on The Strip make money once the bars close.

Santamaria – The riskiest behavior we have seen has been on The Strip. Once they leave where they were, and they are inebriated, they get into line at one of these facilities and engage in the risky behavior. Shared a photo from 10:30 p.m. Saturday where less than half the people in the line were wearing masks and were not distancing as well as sharing drinks and utensils.

MacNab – The behavior in the photo happens all day long, not just at night. It's not just the food businesses along the Strip, it is all the business; it's a dangerous place to get the virus and to ride a bike with no enforcement at all.

Ferrantella – Asked if enforcement would result in better behavior if we had fines for the business not maintaining distancing in their line.

Santamaria – We can enforce that by giving tickets to the establishments.

Bridges – Gave the business perspective on managing lines and the cost effectiveness.

Corbo – This doesn't have to be a one-step all or nothing proposition; you can start with the sit-down restaurants and warn the take-out establishments that the subject will be reconsidered in a week or two. The onus is on them to comply and if there is no change all food-service establishments will be ordered to close early.

Ferrantella – Supports starting with establishments the serve alcohol then monitoring it.

Hill Holdgate – Agrees with Ms. Ferrantella.

Roddy McKelvie – Asked how they feel they can set the tone to get people to social distance.

Murphy – The Town has done a respectable job in communicating and reinforcing that information; she's not sure how much more the Town can do. Agrees with Ms. Ferrantella about separating the establishments. Would like to see written warnings to establishments that are not maintaining social distancing in the lines out in public spaces.

Corbo – He has a proposed motion to that effect when the Boards are ready.

Deborah King – She's not sure what the extra week will do; we have an identified problem. They aren't correcting themselves during the day.

Fee – Asked if those businesses can legally tell people what to do on a public sidewalk.

Corbo – It is his opinion that the establishments have the authority and responsibility to issue that order; the sidewalk is for travel and use. If people are congregating to provide business to an entity and those people are creating a hazard, it is the business' responsibility to undertake that enforcement in conjunction with the Town.

Baxter – Regarding the photo, a written warning was issued to that establishment for better management of their lines outside their business, as well as issued to other businesses.

Visco – He believes it's in the best interest of public health.

Ferrantella – Asked how this would apply to restaurants regarding "cocktails to go."

Baxter – That legislation allows for cocktails as well as beer and wine with to-go food purchases only; how late they can do that depends upon their license – midnight is already the limit for that.

Discussion on the motion; i.e. management of lines.

Action

Motion that the Board order that all restaurants that offer alcoholic beverages for on-premise consumption have last call for service of alcohol by 11:30 p.m. every night of the week and that such establishments shall close and remove all customers by 12 o'clock midnight every night of the week; it is further ordered that all such restaurants shall not serve alcoholic beverages to any person who does not also order food; this order shall not apply to restaurants that do not serve alcohol for on-premise consumption or take-out only provided that staff is directed to strictly enforce social distancing and mask requirements to the extent possible and that all such establishments are warned that they are required to enforce these guidelines as to all customers and the Board will revisit this issue at its next meeting in one week. (made by: Cooper) (seconded)

Roll-call Vote

Carried 4-0//Lepore recused; Cooper, Murphy, MacNab, and Visco-aye

F. Board Member updates and concerns

1. **Bridges** – Asked for clarification on the handling of the lines at establishments along The Strip and daytime risky behavior.

Corbo – The motion doesn't address daytime.

Ferrantella – Asked how this would impact out-of-Town restaurants.

Baxter – The requirement is the same.

Murphy – There is a lot of concern around COVID-19; she doesn't make these decisions unless there is demonstrable public health risk.

Bridges – Asked when this order is effective.

Baxter – Not today; effective July 31st would be helpful.

Action **Motion to make the Order effective date July 31st at midnight.** (made by: MacNab) (seconded)

Roll-call Vote Carried 4-0//Lepore recused; Cooper, Murphy, MacNab, and Visco-aye

2. **Murphy** – Wants to talk about large groups at the public beaches without masks; we had some response patrol officers are trying to help.

Gibson – The beaches are a challenge; personal responsibility is an issue at the beach. We don't have enough people to patrol every beach all day to disperse crowds. Also trying to address carrying capacity of vehicles. We don't want to talk about closing beaches.

3. **Ferrantella** – Asked if the next meeting is joint or just BOH.

Mooney – She will schedule a joint meeting for Friday, August 7, at 2:00 p.m.

Motion to adjourn the BOH meeting 4:17 p.m. (made by: Murphy) (second)

Roll-call Vote Carried unanimously//Cooper, Macnab, Murphy, Lepore, and Visco-aye

Motion to adjourn the Select Board meeting 4:17 p.m. (made by: Ferrantella) (second)

Roll-call Vote Carried unanimously//Murphy, Ferrantella, Fee, and Hill Holdgate-aye

Submitted by:

Terry L. Norton