



BOARD OF HEALTH Emergency Meeting

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 ~~

Monday, October 5, 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

Called to order at 2:30 p.m. and Announcements by Mr. Visco

Staff: Libby Gibson, Town Manager; Roberto Santamaria, Health Director
Attending Members: Stephen Visco, Chair; Malcolm MacNab, Vice chair; James Cooper; Meredith Lepore; Melissa Murphy
Speakers: Dawn Hill Holdgate, Chair Select Board
Town Counsel: Gregg Corbo, K&P

I. PUBLIC COMMENTS

1. None

II. DISCUSSION EMERGENCY ORDER

- a. Draft Emergency Order 13.

Discussion

Santamaria – Increases face covering order to entire Island; otherwise it's too difficult to enforce. (Section) Nr. 4 uses wording for current mask order for town areas and requires all employees to wear masks at job site regardless of type of work. Nr 6 brings back only two people per work vehicle. Nr. 7 limits gatherings to 10 people – exempted drive in and school functions. Over the last 7 days had three transfers to Boston and 2 additional deaths. Emailed this draft out to everyone on the list.

Cooper – Asked how work vehicles are distinguished from POVs.

Santamaria – Registered commercial license plates and work vehicles with company designations.

Cooper – Understands what we're trying to do but it's very hard to pass rules that are hard to enforce. Asks how Mr. Santamaria expects to enforce this.

Santamaria – We have moved into the no-tolerance phase of enforcement; there will be no more warnings. Already issued \$1000s in tickets. It's no secret how dangerous COVID-19 is.

Cooper – Regarding construction and landscaping, asked what happened to the COVID officer on the job sites. He thinks we need to have someone with presence go onto a site and, in the event of violations, shut the job down for 5 days in addition to issuing a \$1000 ticket.

Santamaria – He agrees and would like the fine to be \$1000; however, MGL caps them at \$300. The Health Department can't shut down a building site; only the Building Inspector can do that. We can put stop-work orders.

Gibson – Inspectors are going to the job sites, but, she's not sure they can shut a site down for non-building issues. She has to check with Town Counsel about authoring them to shut down as authorized agents of Health Department; there is a fining mechanism but she's not sure it's legal to have a job-shutdown mechanism in the order.

Regarding Section Nr. 1, face coverings are required except when actively participating in school sports or using the bike paths; asked about language for off-road trails, such as Sanford Farms. Regarding school sports, there are specific standards for that; suggested referring to the schools for that.

- Santamaria** – He can cut school sports completely. He left trails off because most of those are private property thought they are accessible by the public.
- Gibson** – Under Section 4, regarding essential retail establishments, thought that was allowed.
- Santamaria** – This is word-for-word from Emergency Order 12
- Gibson** – Nr. 4, the Governor’s order allows reusable bags.
- MacNab** – Asked why it’s just contractors and landscapers when he sees crowds in cars unmasked.
- Santamaria** – Section 6 refers to all professional vehicles. It’s nearly impossible to enforce private vehicles.
- MacNab** – The problem is people don’t pay attention. Asked why not ban all gatherings; we have cases coming from gatherings. It would be easier to enforce zero than 10.
- Santamaria** – It would be harder because it’s similar to housing situations and trying to enforce against a family. We are looking at regulating non-related gatherings.
- Visco** – Rolling back to 10 per gathering is a lot from 50.
- Murphy** – Clarification on trails would be helpful. We want to be clear about what we expect. Masks and businesses, asked if that means outside work and what are the rules for inside work.
- Santamaria** – Inside work is pre-empted by the Governor’s order limiting to occupancy to 50% capacity.
- Murphy** – Another concern is self-served coffee is currently allowed; asked if we want to ban that while we are “in the red.” Also concerned about how Order (section) 6 will be enforced on people who don’t have transportation and rely upon 3 or 4 per vehicle to get to work; we need to be mindful of those without access to transportation getting to and from job sites. Asked why we waited a week to start these orders; concerned they weren’t started ASAP. Agrees with Dr. MacNab about the gatherings. We are witnessing “COVID fatigue” after 7 months; having stricter rules until we’re out of the red will do help. Asked how long before we would be able to lift this order.
- Santamaria** – We have it in Section 8 that it remains in effect pursuant BOH judgement. We can’t move back to Phase III until November at the least; we can review our status at the regular BOH meeting. Regarding why waited a week, to post and get out to public is minimum amount of time. It is more difficult for people who can’t afford vehicles; it is word-for-word from the previous order. We can ban self-serve coffee if that is the Board’s decision.
- Visco** – We can’t move forward on anything banned by the Governor until we move into the green.
- Santamaria** – You have to have been green or grey for at least 3 weeks before we can roll back.
- Hill Holdgate** – Her biggest concern is vehicles and being fair and being enforceable. Questions if it is harmful if there are 4 people in a car and they all have masks. Agrees with Mr. MacNab about singling out industries and not cars full of people. Hopes the community understands the need to dial up the restrictions.
- Gibson** – During the original emergency order discussion, we restricted vehicles to 2 per earlier on and discussed other means to get to job sites. There was also a previous discussion about other people riding in vehicles; these crews often live with people they don’t work with. Has an answer on any BOH agent, who is able to shut down a job; however, unless the manager doesn’t accept that shut-down voluntarily, it takes a court order. Also, each violation ticket is \$300 per day; that can add up quickly.
- Corbo** – As the BOH has enforcement authority, the issue is how to exercise that; he would not recommend going forward and forcibly shutting down a job site. If an entity doesn’t comply, file a complaint with the court asking for an injunction that the entity comply; that would avoid a confrontational situation and also provides protection from liability.
- Lepore** – If she’s in the car with her husband and son, if it applies to all people, they have to wear masks. She’d really like to stay in school but that will only happen if people comply.
- Cooper** – Back to construction and landscaping, if we don’t have leverage to shut a job down, asked what good does the \$300 fine per day to on an \$8m job. People are simply refusing to follow the rules; we need a legal presence. He says the fine should be \$1000 per day.

Santamaria – Chapter 21 B MGL limits the fine to \$300 per violation of local orders to per day; that can add up if there are multiple violation that go on several days. Natural Resources is also inspecting sites and ticketing.

MacNab – Contractors and landscapers are easily identifiable but the whole community needs to understand about following the rules. We have to find a way for other people to be fined.

Santamaria – Limiting the gatherings affects churches as well; if there are 20 people at a church gathering, we can fine \$300 per every person over 10.

Corbo – Each person not wearing a mask is a separate violation; tickets can be issued to the person and/or the sponsor. Believes you can go up to \$500 per violation of the Governor’s order. Agrees with the comment that it’s easy for some people to write off the fine; if you have repeat offenders, suggested going through the effort to shut them down. If that happens only once, it will reinforce the seriousness of the situation.

Santamaria – Asked if he can shut down an entire company or just the job site.

Corbo – That depends upon the situation: if one job site is not in compliance but other sites are, you shut down that site; if it is all the company job sites, you may push to shut down the company until they comply. Confirmed that for Governor Order 46, the fine can be up to \$500 per violation; Governor Order 48 says all his orders can be enforced through non-criminal disposition. You can shut down a job site or company within a few days; it can be ramped up quickly.

Murphy – Likes the idea of escalation for repeat offenders. We should review each recommendation one-by-one.

Bruce Mandell – Time is of the essence. There was a comment about the Building Department not enforcing such an order because the violation isn’t building related; asked who authorizes BOH agents. When someone takes out a building permit, the premise is that the site will be operated in a safe manner; feels these emergency orders are related to that safe operation. It would be good to monitor COVID Coordinator responsibility for these jobs.

Santamaria – Section 9 lists the BOH agents.

Peter Morrison – There are ways to get more compliance, you could cover a broad amount of “Real Estate” if you have ambiguous statements about enforcing gatherings of 5 and more. Another suggestion is it might boost compliance if there is an explicit statement the violators will be listed in the Inquirer & Mirror.

Santamaria – Publishing violating contractors being been done before. However, he wouldn’t recommend a public shaming campaign; however, if that is the board’s decision, he’ll do it.

Corbo – You don’t want this to be ambiguous. You have the authority to enact reasonable health regulations as long as those regulation are rationally related to protecting public health, safety and welfare. You do have an enforcement issue in terms of resources to go after every group of 5 or more people. You also have to show some leeway to allow practicing religion safely. You could justify a restriction of 5 or more regardless of relationships but be open for a challenge.

Murphy – A question from Amy Eldridge; the church event that led to spread was a post-service gathering; asked if we are limiting the number of people at a church service.

Santamaria – It was the lunch and dinner after the service that was the spreader event. Explained that construction and landscape jobsites are targeted because they were part of the earlier spread.

Burt Rice – He’s COVID Coordinator for Summer Street Church. We’ve gone full remote but there are questions about the distinction between church and state. We are complying with everything that has come down. If people don’t wear a mask in church, asked if every attendee would be fined. Asked how they segregate between workers in the trades and hospitality and retail.

Santamaria – We would fine the church. We aren’t looking to enforce against a church service. The church gatherings are what happen after the service. It is difficult to enforce those who work and travel together.

Alex H – To her, it sounds like there isn’t thought into how to educate the public about the virus symptoms and how they are transmitted.

Santamaria – The Town has spent significant time and money doing nothing but education regarding COVID. Considering how big this is nationally, it’s hard to increase education further. We will continue with our education; we are working with the hospital to do PSAs (public service announcements) and press releases; NCTV has run all our information.

Morrison – His suggestion wasn’t to enforce gatherings 5 or more but to announce that we need to tighten up to extinguish the spread. We are strongly urging avoiding social gatherings of 5 or more. Social Gathering is an ambiguous term. He would like to encourage people to be more fearful about breaking a perceived rule.

Cooper – Asked how many people the Health Department has to do the enforcement.

Santamaria – 5 in the Health Department and 3 in Natural Resources; PLUS has 4 Building Inspectors; and we have Police Officers delegated by the police. Whether or not that’s enough is a difficult question.

Cooper – Asked what the BOH needs in order to enforce what has to be done.

Santamaria – We can’t be everywhere at all times.

Cooper – People are dying. If it takes more people, we need more people.

Santamaria – We are interviewing for an extra *per diem* inspector on October 7th. We’ve added the seasonal inspector. The issue is the logistics; the old adage “having a policeman on every corner.”

Murphy – She feels the same as Mr. Cooper. She has asked herself what this board could have done to prevent even one death; we have to ask ourselves that when looking at these orders. Sadly, she thinks there was nothing more to be done; prevention of this disease is grounded in personal responsibility. In these instances, we saw poor choices made by members of the community, but this is not the time. The Town has done a tremendous outreach and education program. This is an air-borne disease and people have to wear masks. We can’t lose any more lives.

Santamaria – Reviewed the draft order.

MacNab – Proposed amendments: Section 6 limiting to 4 people with masks per vehicle and Section 7 limiting to 5 people per gathering.

Murphy – Asked if the order should be clear regarding church services.

Corbo – The Governor’s order, updated September 8, limits religious services to 50% of the building’s maximum permitted occupancy; for buildings with no permitted occupancy it is 10 per every 1000 square feet. There is no occupancy limit for outdoor religious services; you might want to address that here. About “essential retail establishments”, that isn’t a current phrase at this time and should be eliminated. Sections 3 & 5 don’t go beyond what is currently required under State law. Suggested wording requiring employees and contractors to wear masks when at work or on a work site even when not required by the Governor’s order; it becomes a catchall. Also, “All businesses opened to the public should comply with sector-specific guidelines for reopening and must limit the number of customers and staff.” Section 7 on gatherings, he doesn’t understand “controlled entertainment venue.”

Santamaria – That is what he calls the permitted venues; he can eliminate that; that would allow theaters to have 25 people.

Action Continued to October 6th.

Roll-call Vote N/A

Recessed the BOH meeting 3:58 p.m.

Submitted by:
Terry L. Norton