



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 ~~

Tuesday, October 6, 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

Reconvened at 3:01 p.m. and announcements by Mr. Visco

Staff: Libby Gibson, Town Manager; Roberto Santamaria, Health Director; Paul Murphy, Building Department; Chief William Pittman

Attending Members: Stephen Visco, Chair; James Cooper; Meredith Lepore; Melissa Murphy

Absent Members: Malcolm MacNab, Vice chair

Town Counsel: Gregg Corbo, K&P

I. PUBLIC COMMENTS

1. None

II. DISCUSSION EMERGENCY ORDER

1. Draft Declaration of Public Health Emergency - Emergency Order 13.

Discussion **P. Murphy** – Provided and update on the process of inspectors: distancing, masking, log books. We are finding most people cooperative.

M. Murphy – Mr. Murphy’s office, along with BOH and Town Administration is a collaborative effort to enforce the rules we have in place. Asked how often job sites are inspected.

P. Murphy – We do 10 to 12 inspections a day; we don’t do surprise inspections due to being busy.

M. Murphy – She’s concerned that when people know the inspection is coming, they put a good face forward. Asked the best way to report violations.

P. Murphy – When an inspection is called for, they don’t know the time we are coming; we find they are in compliance. If someone is not cooperating, we call the Health Department.

Santamaria – To report a concern, call Health Department 508-228-7200 extension 7009 or email at health@nantucket-ma.gov.

Gibson – People can also contact Labor Services through the Town website.

Cooper – Asked why Mr. Murphy isn’t authorized to fine someone in violation.

Santamaria – They are; but it is easier to go through us. We can issue a ticket based upon what our agent saw; same is true for Board members.

Santamaria – Reviewed changes based upon discussions at the previous hearing.

Lepore – The term “Marina” is confusing. She doesn’t want people thinking that they don’t have to wear a mask at the Hyline or Steamship docks. Suggested the term “ports of entry” to include the airport.

Santamaria – Section 2 is the same as Emergency Order 12 regarding businesses; it is also covered by the Governor’s order. Section 3 addresses face coverings.

Lepore – Confirmed that if a painter or such is in a room alone, they don’t have to wear a mask.

Santamaria – Section 4 addresses masks while carpooling in commercial vehicles.

Lepore – In her opinion, four in a car is too many regardless of wearing masks.

- Corbo** – Under the State guidelines for construction sites, individuals are required to take their own car to the job site and are not supposed to be car-pooling; nothing here eases those restriction. Regarding traffic stops, there are strict limitations on what circumstances the Police are allowed to stop a vehicle; he would defer to the police chief regarding stopping a car for not wearing a mask.
- M. Murphy** – Doesn't think that if something can't be safely enforced by the police, it shouldn't be included in the Emergency Order. She sees it as targeting the trades. She'd prefer to see 6 allowed in a vehicle, that's consistent with the dining order.
- Cooper** – Regardless of the number of people, it is a matter of wearing masks. Six people in a car with masks is better than four without masks.
- Visco** – He thinks it should be left at four.
- Pittman** – He doesn't know of any legal justification for making a traffic stop based upon an Emergency Order. He questions how the lack of masks in a car would be enforce unless the officer follows them to the job site. Noted many people on Island use their work vehicles for personal use as well.
- Corbo** – The latest language focuses on vehicles with commercial plates and branding carrying more than 4 occupants. Doesn't believe a COVID order would justify a traffic stop.
- Cooper** – Regarding Section 10, asked if all police personnel are authorized agents.
- Pittman** – Most likely it would be solely police officers. An officer might see a violation, but they have a choice to address a mask violation or continue on to answer another call; we don't assign people to look for mask violations. If during routine patrol, they observe a job site not following the order, they are to contact the Health Department.
- M. Murphy** – Section 4, asked what this part of the Order would accomplish if it can't be enforced; wonders if it wouldn't be better addressed through education and outreach.
- Corbo** – The inclusion of these requirements in the Emergency Order is not there for replacing education and information about best safe practices but to be a requirement with the expectation that people will comply with that requirement.
- Santamaria** – Keep Section 4 at 4 per vehicle. Section 5 addresses gatherings: 10 was in Phase I of the Governor's order from June and was very effective. It does not apply to restaurants; religious services are covered by a Governor's order. We do not have signs that there is spread at theaters and the drive in.
- Maggie Stewart** – It looks like Point 8 addresses many of her concerns. However, it requires 1-week notice for events and this order would be implemented tomorrow. There are events planned for this weekend which will be negatively impacted.; organizers have worked hard to ensure they are as safe as possible. This seems unfair to an industry that has been disproportionately impacted by the plague.
- Corbo** – Point 8 is not intended to be a variance procedure; we want people to have the opportunity to answer the question of whether or not their event is covered by this order.
- Lepore** – Feels that would be allowing people to have a party in the face of the spike. We've worked hard to open the schools and doesn't want to see them closed again.
- Santamaria** – The Governor is taking the Red Status very seriously. Currently there is no pull back because of the Red designation.
- M. Murphy** – Agrees with Ms. Lepore. We can't underscore enough that this is a global pandemic and we are a Red Community. Feels it would be irresponsible to delay implementation for a week. Agrees with Section 5 as written.
- Peter Morrison** – To boost self-compliance, suggested that in Section 4 add the statement that the Police Department enforcement is authorized where appropriate.
- Corbo** – In his experience, courts limit police officer justification to make traffic stops. Inserting that statement won't change police practices.
- Visco** – Agrees about Section 5 and not waiting.
- Santamaria** – Section 6 indicates that the local orders do not abrogate the governor's orders.

- Edna Yelle** – All the orders have addressed industries other than hospitality; asked why other industries are being targeted.
- M. Murphy** – This order isn't intended to target any industry; the point is to ensure everyone's health and safety is protected and getting our community back into Green. Just because there hasn't been a spreader event doesn't mean there won't be one; she doesn't want to take that risk.
- Yelle** – Asked how an event is different from an open restaurant
- Santamaria** – There are strict policies and procedures that can be enforced in a restaurant but not an event.
- Lepore** – There have been weddings in other parts of the country that have been spreader events; we want to prevent that.
- Santamaria** – Section 8 requires notification to the Health Department regarding holding an event to determine if this or the Governor's order applies. Contact the Health Department in writing at health@nantucket-ma.gov.
- M. Murphy** – "... to the extent necessary" seems to imply use of judgement; would prefer to see it removed.
- Corbo** – The ability to enforce imposition of a ticket or fine is not intended to take enforcement discretion away from the office; the primary means of compliance remains through education and cooperation. If efforts to use voluntary compliance fail, fines and tickets are the next step under "... to the extent necessary."
- Regarding Section 12, the Governor issued an order authorizing fines up to \$500 per offense; that applies only to the Governor's orders; the Town is restricted to \$300 per violation.
- M. Murphy** – Asked what happens if someone doesn't pay a fine.
- Corbo** – There are additional enforcement opportunities; a non-criminal offence can be converted to a criminal offense. Also, there are several methods of civil enforcement such as denying licenses or permits as well as revoking or suspending licenses.
- Cooper** – Doesn't see anything under Section 12 about shutting jobs down. Asked if we gave up on that. Feels putting that in writing would send a very strong message. The last thing a company wants to do is have their job site shut down.
- Corbo** – The regulation has to specify what the officer is allowed to enforce and what the level of enforcement would be. The Town always has civil enforcement authority. We can add a paragraph relating to civil enforcement.
- Visco** – Doesn't know if that has to be in the Emergency Order.
- Pittman** – Asked if there are concerns about due process rights when adding language of that type; if a site is shut down, asked if there is potential liability.
- Corbo** – As with any type of enforcement matter, we would look to ensure due process prior to shutting down a business or activity unless it is an egregious violation.
- Morrison** – This document is being drafted as a proper legal document; you have an opportunity to maximize self-compliance through the language. Feels there should be a phrase stating the police are authorized to enforce the Emergency Order.
- Santamaria** – Doesn't know if that belongs in the document. We've done significant outreach and education.
- Pittman** – The place for that would be in a press release; this document provides a framework by which we work and without being threatening.
- Stanley Polchinski** – Section 1 applies to "all areas of the Town open to the public whether property is public or privately owned." Section 3 addresses "place of employment on the Island of Nantucket." Asked if Section 1 is for the Town only with Section 3 the whole Island.
- Santamaria** – The intent is for the whole document to refer to the entire Island.
- Corbo** – That was an inadvertent mix up and can change Section 1 to "Island."
- M. Murphy** – Asked if Mr. Santamaria could include fines issued in a week into his Select Board report.

She has received a few comments from folks who are confused because this order is limiting gatherings but has no impact on schools, where classes have more than 10 students.

Santamaria – We can provide an enforcement report.

The difference between a gathering and a school is the school is a controlled environment with someone in every classroom who ensures COVID protocols are enforced. That is not so for a gather or event.

Corbo – The BOH has to draw the line somewhere because we can't control every detriment to public health; we can only eliminate as many as possible. Schools and religious services provide a public purpose where events don't.

M. Murphy – The Town has had a robust education program, but mask orders should be posted more obviously at points of entry. Suggested advertising in the newspaper; the radio would help. She would like an update on State testing; feels testing is the next most important element we can offer.

Santamaria – He requested asymptomatic testing but hasn't heard from the Governor or Secretary of Health & Human Services. The Department of Health thinks we will be getting a set up where the Hospital is reimbursed for the tests; that would last only as long as we are Red. We are working on education and flyers in multiple languages and updating our signage.

Lepore – Asked if there is a way to push the State. She feels asymptomatic testing is long overdue; they could easily put their mobile unit on the boat and park it at the hospital.

Santamaria – We sent another email today to the Governor and other State officers.

Ms. Jonathan Green – Understands the need to protect privacy; but would like more demographics on the age and race of the person. She thinks it would help inform the public.

Santamaria – He brakes the demographics down at the Select Board every week; it is also on the Town COVID-19 website.

Corbo – Before we bring this to a vote, there were questions about the 2nd introductory paragraph. Asked what month should go in there and if “numerous hospitalizations...” should be clarified.

Santamaria – More than 60% of our cases were from September. Regarding, “numerous hospitalizations...” he understands people would like to hear more; we have had 8 hospitalizations and 3 deaths. Set the implementation date for Wednesday, October 7, 2020 at noon.

Action **Motion to Approve the Emergency Order 13 as drafted.** (made by: Murphy) (seconded)

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

Santamaria – He will forward the final draft to Mr. Corbo and the BOH members.

Motion to adjourn the BOH meeting 4:26 p.m. (made by: Murphy) (second)

Roll-call Vote: Carried 4-0//Murphy, Lepore, Cooper, and Visco-aye

Submitted by:

Terry L. Norton