

ERIE COUNTY BOARD OF HEALTH

MEETING MINUTES

SEPTEMBER 27, 2022

PRESENT: Robert Free, Vice President, Food & Beverages, Buffalo Bisons Baseball/Canalside/Outer Harbor  
Honorable Lisa Chimera, Erie County Legislator  
Dolores Funke, P.E.  
Marilyn Tuberdycyk  
Michael Merrill, M.D.via Webex  
Diane Loomis, via Webex

ERIE COUNTY DEPARTMENT OF HEALTH

Gale Burstein, M.D., Erie County Commissioner of Health  
Jennifer Delaney, P.E., Erie County Environmental Health Director

The meeting was called to order.

I. REVIEW OF MINUTES FROM JULY 26, 2022

Rob Free asked if everyone had a chance to review the minutes. All had, there was a motion by Dolores Funke to approve them as written, Marilyn Tuberdycyk seconded the motion..

II. UPDATE FROM JENNIFER DELANEY REGARDING SEWERAGE RELATED PORTIONS OF THE ERIE COUNTY SANITARY CODE

Ms. Delaney said that Environmental Health is looking to update Article 4 and 4B of the Erie County Sanitary Code. The update has been completed and sent out to BOH members. They started with article 4 and added article 4B, these sections were in need of a language update and overall revision. Article 4B has been incorporated into article 4. Article 4B specifically included information related to the construction of septic systems. As septic systems are talked about in article 4 property transfers, subdivisions as well as privies, there was really no reason not to bring the information to be incorporated into article 4 .

The \$1000 bond was eliminated for property transfer certification waivers. The word waiver was eliminated altogether as a waiver is technically a permanent release from needing a code requirement; whereas a variance is a onetime postponement of that requirement where you will come back and make it right to meet the code in the future. When we allude to a property transfer waiver, when the conditions are better they need to come back to us and complete it; so we changed from a variance to a waiver. The elimination of the \$1000 bond is supported by the real estate community. They really would prefer not to have that burden on the purchaser at the time of sale. As they find it cumbersome, it gets confusing, the seller sometimes pays for it instead of the purchaser; and what very often happens is that they do not get their money back and the property transfer does not get done. What we are actually going to do is place an expiration

date on variances, if we do not we will get a phone call from the purchaser. We will issue that purchaser a violation notice form Article 4. Article 4 allows us to place a \$500 per day fine on the violation. This will be capped at \$1000 which is the current waiver amount. Since we now have a functioning robust enforcement action and hearing officer, we will bring them in for a Commissioner's hearing. We will then require the \$1000 or they will have to let us come in for the dye test. We can use this as an incentive, as we don't have to collect the money upfront. This will also eliminate some accounting burdens in collecting and returning the fees.

We also added a statement in the property transfer section basically stating that by us issuing the certification is not a guarantee of future functioning of the system and we reserve the right to come back if it should fail afterwards. This was stated in our paperwork but not actually in the Sanitary Code. We also added a requirement for abandoning septic tanks. At the current time when a system is done or connected to sewers there is no requirement to properly abandon a septic tank. They are hazards, in particular in older steel tanks the roofs rot out and collapse leaving large pits on properties usually full of sewage from days gone by. We added a requirement to crush them or fill them with stone. We changed the section on temporary toilets to better clarify the requirements and take into account the upgrades to standard temporary toilet construction and sanitation. . The current section on temporary toilets referred only to construction sites. This has been expanded to include all temporary toilets in that they should have hand sanitizers and or hand washing ability. We did say how many should be included at any site, as this is included under mass gathering codes as well as the building code. This addition would mainly be based upon a complaint lead, as in someone complaining on a porta john not being pumped out and smelling. This gives us a little extra in case of this situation...

Another change that was made was that rest stops and comfort stations were included. Basic cleanliness such as having running water, hand washing, soap, paper towels, toilet paper available in locations; whether they are temporary toilets or permanent. Public restroom complaints are common. Main concerns are cleanliness of the facilities or lack of supply materials. Our current sanitary code was lacking in details so that we have expanded this section to include some very basic cleanliness issues. We also did include public showers and locker room facilities, so that it encompasses more establishments. These were the main updates for the existing code.

Several sections were also removed. The section related to phosphorous and detergents mainly because it is now covered by federal law. The section on privies was cleaned up and is included under temporary toilets. Basically the big change with it is there are to be no privies or holding tanks allowed for permanent occupancy residences.

In Article 4b now incorporated into section 4, there is a requirement that lots needing alternative septic systems must be at least  $\frac{3}{4}$  of an acre (20,000 square feet) this does not equate it would need to be around 32,000 square feet. This has been changed along with a statement that it cannot include roadways etc. The  $\frac{3}{4}$  of an acre must be usable land not part of a road or an easement. The section was updated to references to standards and manuals. At the current time the Commissioner sets the standards it was changed to NYSDEC already presets regulatory standards and design manuals.

The other issue discussed at the prior meeting was adding a section on fitness centers, locker rooms and shower facilities. This was added as section 15 of article 4 as many complaints are received. There is no provision in building code for cleanliness in these facilities or anywhere else. The section on fitness centers reflects very similar to public toilets. A lot of the same things are included in both sections. The cleanliness factors as having to clean floors, walls, having hot and cold running water, tempered water faucets, hot water for showers included. All of this is the same between the two. What we did add in the fitness facilities is a need to provide a means for patrons to clean their own equipment. And for facilities to have a cleaning plan available for us to review that would say they are going to go in every morning before opening and wiping everything down. Making sure there are no exposed wires, and that machines are in good working order. Also a plan for shower curtains to be replaced or cleaned so that they are not black with mold. The facility would need to have the cleaning plan reviewed by the health department. The permit will be good for three years as opposed to one year, and a \$300 fee will be instilled. The first three year permit will be free. The goal will be to inspect once during the three year time period and then to handle complaints as they come in. This a rundown of the changes made to the two articles. We feel that these changes are beneficial to the community as a whole. Making the property transfer easier, but also getting the end results we are looking for., As well as having some public health significance in public restrooms, temporary toilets and in the fitness facilities, in areas where we see complaints and have issues in which we cannot formally go and do much about. Another big change is the layout of how sections are set up. We tried to section them out so that the whole paragraph is broken into sections, so that we could better issue notices that are clear to what is wrong. The beginning was enhanced with some of the standard language that we use in our housing section; and we have cleaned up some of our definitions and made them clearer so that they are easier to understand. Ms. Delaney said that they are open to all questions and feedback by the BOH members.

Dolores Funke had questions regarding Section 15.4 exercise equipment, the layout of the facility shall provide enough space to ensure that all exercise equipment can be used safely at all stations. She asked if this was done by a review by some entity based on the design plans when the facility is originally constructed. Ms. Delaney answered that there should be manufacturer recommendations for spacing around most equipment. We did not want to put in a specific requirement on it, but that they follow manufacturers recommendations. Ms. Funke questioned equipment being well maintained/cleaned, she asked if this was subject to a records review, so that we could ask them to show us their records of maintenance and sanitation. Ms. Delaney replied that maintenance would include things that could be obviously observed, such as weight machines with ripped or torn upholstery and not being easily cleanable it should be repaired. Frayed cables and exposed wiring are dangerous, this is an example of some obvious things. She went to say that they are not looking for a maintenance record but a visual of what is going on. Rob Free suggested asking the facility to have a plan on site, Ms. Delaney agreed that this could be included. . Ms. Funke then said that you could say to prove to me that the facility has been following the plan. On the health and safety requirement, a first aid kit needs to be present, a defibrillator is covered under the building code. We can always refer any other unsafe circumstances to the building code. OSHA also has workplace safety that would also apply to a gym, as a worker could be injured just as easily.

Ms. Delaney said that she spoke with the New York State Health Department, Western Region office regarding these changes to the Sanitary Code and they are supportive. As they get complaints on fitness facilities and unfortunately there are no regulations at this time. Lisa Chimera asked if there would be a special training for workers going into the fitness facilities to which Jen Delaney responded that her staff would be trained on the inspection process. The long term of this will be that we need to create an actual standard operating procedure for the inspection process and an inspection form. The operators of the facilities also need to be trained. This will start with site visits by our staff, handouts and flyers, as well as a copy of what our inspection will look like and a conversation and walk through. The actual inspection could be done at that time depending on the operator, they will be given an application so that the process

can begin. There will be anticipated resistance from some of the operators, and these will be addressed with time and patience. If needed this could lead to a Commissioner's hearing. Lisa Chimera thought that the roll-out should be very sensitive, informative and guiding each fitness facility that is supportive in nature, not punitive. Since there is a \$300 fee, thinking of huge corporate facilities in comparison to very small facilities that are very specific in nature with small memberships. Dr. Burstein suggested perhaps implementing a sliding fee depending on the membership number. Jen Delaney said this could be discussed and implemented.

Dr. Merrill had some questions. He agreed with perhaps implementing a sliding scale for gyms with smaller memberships. He suggested having inspectors looking for defibrillators on the inspection sheet as he felt it is a key public safety piece of equipment to have in gyms. He had a question regarding privies, asking if anyone actually has an outhouse, and would the changes cover them. Ms. Delaney responded it would specifically cover an outhouse. However the department does not have a record of where the outhouses are located in Erie County. There are some general rules that do allow off the grid living so they can have privies. Therefore we cannot completely eliminate them. Ms. Delaney will look at the definition again to make sure that it is clear that outhouses are included. Dr. Merrill asked about the definition of a gym, health or fitness facility, he questioned if this was specific enough. He asked if a salt room would be included, or isolation tanks that people float in, or a facility that offers nutritional counseling. Ms. Delaney said the state of Massachusetts has a code for fitness centers that is very similar to what we now have. We looked at their definition of and the Dept. of State's definition for a fitness facility, as we are trying to be specific yet slightly broad. We do not want to regulate saline bath locations that come under medical equipment The State actually considers this to be a medical device. We are trying to cover mainly gym facilities, however there are small yoga and barre studios where there is shared equipment that we are trying to cover, as mats etc. should be cleaned. We combined several definitions together; we preclude facilities but include others. A huge amount of educations will go with this. We have a partial list of facilities that we can pre-visit and prepare them and hand out information for what is coming. Dr. Merrill brought up small neighborhood gyms that would have to undergo unreasonable capital improvements to be compliant, would they get a waiver or variance? Ms. Delaney said that they would start with the variance process. There are provisions included for a variance process where time can be given for adherence to the code.

Ms. Delaney wanted everyone to have the time to review the revisions. A vote will not be taken at this meeting. She would like to institute the property transfer changes by spring 2023. Rob Free suggested an e-mail vote be taken after everyone is done reviewing the document. The documents will be sent out to the clerk of every city, town and village in Erie County. The revisions will also be posted at the Environmental Health offices for the public to review. A public hearing will be held immediately preceding the next BOH meeting. After this the Erie County Legislature must approve the revisions and then they will be sent to the New York State Dept. of Health. The county Executive's office has already looked at the revisions and they are currently at the Law Department for their perusal. The sliding fee scale will be reviewed later this week. This information will be sent out and an e-mail vote will be attempted around October 18<sup>th</sup>.

### III. COMMISSIONER'S UPDATE

Dr. Burstein went on to say that in the past few weeks reported Covid cases have been higher in September in general than they have been over the summer. In looking at our waste water data we seem to be trending down compared to where we were in the summer. The CDC has us at a medium community level and a high transmission level. However, according to our waste water the trend is either staying the same or decreasing slightly. In the past couple of years where we started to see increased cases has been around Halloween, as it gets colder at the end of October, and Halloween parties that facilitate transmission.

We are also concerned about a bad flu season being predicted, based on the flu season in South America. It also started earlier than it usually does, we are also concerned that our flu season will start earlier. Flu starts here anywhere from mid-January to early February. Another challenge is when is the best time to receive the flu vaccine, as last year's flu season was remarkably long. It lasted into the late spring into the early summer, if it goes into March it is unusually long. Sometimes there will be a second peak of influenza B in March. Last year it was all influenza A that still persisted through May. One thing is don't get your flu vaccine too early because you want it to last throughout the flu season, but then if the flu season starts early, it takes about 2 weeks to develop good immunity. It is unlikely we would see flu before January, or really early would be the end of December. Dr. Burstein thought that you could wait to receive the flu vaccine until the end of October or beginning of November. Every year is different so we will find out.

Dr. Burstein said that there is a lot of respiratory infection now in NYS, including Erie County. Last week Children's Hospital census was 50% higher than it usually is within the emergency department. At this time of year their census is in the 120's, last week the daily census was in the 190's. Rhinovirus, Covid and Enterovirus seem to be prevalent, and circulating in the community. Many respiratory admissions with wheezing are being seen.

In terms of monkey pox we have had 19 cases. None of them are related to each other. The investigation results have not been very robust. Everyone denies knowing who their close contacts are. We have not been able to do a lot of specific post exposure prophylaxis. Our strategy has been expanded pre-exposure prophylaxis, making sure that anybody who could potentially be exposed in the future gets the vaccine, so we are calling it a prep kind of strategy. We have given over 3,000 doses of monkey pox vaccine. Right now we feel we have hit hard in the community and so we are focusing on colleges and universities. We have a clinic planned at UB on October 7, and we are having conversations with ECC, D'Youville, and Buffalo State about holding vaccine clinics at those locations. Dr. Burstein feels that it is important to get the affected community involved with planning and promoting vaccine clinics. They need to get people who represent the LGBTQ+ community involved with helping us plan the clinics. Hopefully we will start those clinics in October, then the second dose is given 28 days later.

She continued on with saying our OPIOID overdoses remain to be very high. Our strategy now is harm reduction which many of our grants have to do with; and also settlement funds.

#### IV. FOOD POLICY COUNCIL UPDATE

Rob Free told the group the FPC was off in the month of August, the executive committee worked through August, they are trying to employ a Fellow. Dr. Burstein said that there was a problem with interviews being scheduled. Since it is a volunteer group, a paid Fellow is being sought. Rob Free indicated that an interview was trying to be set up for this coming Thursday. The FPC will also be presenting to the EC Legislature in October to hopefully obtain some kind of funding, so that they can hire someone to perhaps be an Executive Director that can do the day to day work and

follow up with issues. The FPC was working with a person from the County Executive's office that has since left, however another liaison person will be made available. The FPC will determine what direction they want to pursue with the Legislature, whether it be written into law or a resolution that supports the FPC. Legislator Chimera thought that getting it written into law would be the best alternative so that the FPC has a budget line every year and a dedicated person on the payroll to administer and lead the FPC. Hopefully after the meeting with the Legislature there will be some good news to share.

There was no new or old business to discuss. The next meeting of the BOH was scheduled for Tuesday, January 17, 2023 at 3:30 P.M. via Webex. The meeting was then adjourned.

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