

ERIE COUNTY BOARD OF HEALTH

MINUTES

SEPTEMBER, 19, 2023

PRESENT: Robert Free, Vice President, Food & Beverages, Bisons  
Baseball/Canalside/Outer Harbor, Chairman, BOH  
Marilyn Tuberdyc

VIA WEBEX: Diane Loomis, DNP, FNP  
Michael Merrill, M.D.  
Maureen Montgomery, M.D.

EXCUSED: Dolores Funke, P.E.

ERIE COUNTY DEPARTMENT OF HEALTH

Gale Burstein, M.D., Erie County Commissioner of Health  
Thomas Muscarella, Environmental Health  
Peter Tripi, Environmental Health  
Cheryl Catuzza, 608 William Street Clinic

GUEST: Lianne Novak, Food Policy Council  
John Long – Public interested party

I. REVIEW OF MINUTES FROM MAY 2, 2023 MEETING

Rob Free asked if everyone had a chance to review the minutes, the group had and a motion was made by Marilyn Tuberdyc to approve them as written, as was seconded by Diane Loomis.

## LICENSED HOME CARE SERVICES

Cheryl Catuzza, a nurse with the 608 William Street Clinic was invited to the meeting to present a Licensed Home Care Services presentation. However she informed us that the NYSDOH has not recently visited for a Licensed Home Care Services inspection. At the time the inspection is completed we will invite her or Elizabeth Terranova back for a presentation.

## II. FOOD POLICY COUNCIL UPDATE WITH LIANNE NOVAK

Ms. Novak told the group that she as Coordinator joined the FPC in May. She is a New York State Public Health graduate fellow. The FPC has published its first newsletter on July 31 it will be followed by a Fall newsletter on October 2. The newsletter highlights different local events, programs and incentives such as double up for a food buck. They also do a member's corner, and invite different members to submit content as well as sharing recipes. They are also starting to improve their social media presence in posting information once or twice a week on Instagram and Facebook accounts. They have also been doing a series of multiple posts this past summer going into fall. Such as tips working outside in the food system on hot days; and are also wrapping up a series on canning, and how to preserve produce that you might buy at local farmer's markets or at the store or those that you may grow yourself. The FPC is also posting information on preparedness in emergencies such as power outages but also considering weather related events that might result in instances where there are trees down that are blocking streets to the grocery store even after the power comes back on.

Rob Free mentioned that this was one of the things that the Deputy County Executive really wanted the FPC to focus on getting out these one page informational flyers addressing various emergencies. They are also thinking about carrying this information beyond social media, recognizing that not everyone has access or will not think to look back at social media posts. The FPC are thinking about different ways to get them on the website where they are looking at doing a PDF booklet but also different image galleries with captions that people could scroll through. The last thing was a new resource hub on their website. Their

resources page is also going to get its own renovation in the near future. Also adding information for organizations looking to start a business and information about nutrition benefits and incentive programs and are in the process of developing a similar thing for shoppers and consumers. This would have some social media posts and some other information as well. The last thing the FPC is doing as a council is working with the executive committee as they prepare to talk to the legislature about the FPC's future, thinking about where the FPC is situated and the different structure that we may be shifting towards in the future.

Rob Free said that the FPC was created as an entity that was housed under the BOH. There is a process of migrating the FPC into a different arm of the EC Dept. of Health. They are working on where this best fits. It also has to be decided if it remains a council or written into law. The FPC needs to get funding moving forward, the consensus is that this is the best route to go to keep continuity within the council. We are talking with Lisa Chimera, the Deputy County Executive on how to get in front of the EC Legislature. This should happen sometime in the fall. Rob said that Lianne has been a very valuable addition to the FPC staff and has accomplished a lot in the short time she has been with us. The name of the FPC Instagram is FPCbuffaloerie, Facebook.com/buffaloeriefpc. Slides and information will be sent out.

### III. UPDATE FROM TOM MUSCARELLA AND PETER TRIPI OF ENVIRONMENTAL HEALTH REGARDING EC SANITARY CODE TOBACCO VAPING AND RETAIL PERMITS

Tom Muscarella and Peter Tripi brought in some handouts on what 1100 flavored very colorful vapes look like to show to the BOH, that were on the shelf in a store that had been recently inspected. There is a significant need for these revisions to the sanitary code due to the violations that are coming in. One of the biggest issues that we cannot address is the distribution at wholesale. These places are marketing to stores that it is okay to sell and market these items that are illegal both federally and statewide. It is the FDA's responsibility to oversee the wholesalers. The retailers even sell while their permits are under suspension. Statistics were recently provided to the BOH, these are up by 15% to underage people, this used to be 2%. The same stores are cited over and over. There are hearings twice a month, the docket is about 85% tobacco vapor cases.

The revisions have been written up to be firm and authoritative. Tom Muscarella said that they tentatively named them article 23, this is adding a new article to the end of the code as it did not fit within an existing article. Permitting, inspection and enforcement of retail tobacco, retail vapor and retail smoking paraphernalia (i.e. bong, bowls, rolling papers, pipes) were added in thinking that with the dawn of the cannabis shops opening up nearby these paraphernalia shops will open up also to serve this purpose, and we did not want to leave them unregulated. As these are still restricted products for those 21 and older. This is one of the bigger changes that is currently not really regulated. There will be annual permits with a fee for each type of business. One of the biggest catches in obtaining a permit is that they have to have all their ducks in a row for every other type of permit that they need.

Environmental Health teaches a tobacco sales training course in Erie County that is a NYS course that we are certified to teach and is free of charge. It is a four hour course to teach retailers about public health law and their responsibility to selling tobacco vapor products. This will be required as part of their permit. One person in the store during operating hours has to be certified. Someone who potentially will remain at the business, perhaps a manager or a decision maker. It is made for the point of sale person, as when you sell to an underage and you are found guilty of it you are assessed one or two points on your license, and your NYS license is suspended at 3 points. If you have the certificate and it is valid at the time of sale you will only get assessed one point according to the public health law. This is all spelled out in the revisions.

We have listed out what will be a public health hazard that will give us the ability to ideally close an establishment almost immediately. What is listed is offering for sale any prohibited product. Any sale to a person underage, denial of access for an inspection. One of our current problems is that in the public health law they can deny us access and we need to oblige, there is no teeth to get behind being able to do the inspection. Having the permit will give us the ability to do the inspection. If we are refused this is a sign that something is being done that shouldn't be. They would need to be closed and a hearing would be scheduled.

Failure to provide proof of valid registration from any required state or local agency falls into or off after getting their permit; then we can pull our permit or any other condition that the Commissioner deems a public health hazard.

Marilyn Tuberdyck questioned what would be deemed as an immediate correction close it or remove all products from the shelves and place it where?

Tom Muscarella answered putting it in the dumpster, or we seal it off and take the product until such time that a hearing takes place. This remains to be seen. Once the revision is completed this will be seen as a procedural issue that we can adopt.

The last item is the fine schedule. Pretty much what is outlined in public health law is what we want to go with except the flavored vapor products that is weak in public health law. That's a maximum of \$100 per item, it does not escalate on the second, third or fourth violation. We are limited with this and we get these places that have a sale to an adult illegally the first fine is only \$300, \$50 plus the surcharge then it goes up. Tom kept it at \$100 for the first offense and for the second and subsequent it was set at \$250 and \$1000. This will discourage them in selling to minors. The state has a \$250 surcharge for each violation, he wrote in a \$200 surcharge at the county level for each violation. This money will come back to the program to be used for education and conducting inspections. We could possibly add on another staff member.

These have been the highlights, they have put a lot of effort into this endeavor and they are now opening it up to the BOH for questions, comments, edits. They asked the BOH to look it over in the next 10 to 15 days so that it can be forwarded to the legal department by early to mid-October. Hopefully it will be completed by the next BOH meeting tentatively scheduled for January and the revisions to be implemented in April.

The whole goal of this endeavor is to improve on the State law and to make it more enforceable so that we can actually through attrition and enforcement reduce the number of stores selling illegal contraband

#### IV. COMMISSIONER'S UPDATE

Dr. Burstein indicated that cases of COVID are increasing, the variant BA. 2.86 has been recently found in waste water. With the low level that they found they think it equates to about 30 cases per 100,000 population. Erie County was the second county in NYS where the variant was identified. However, it has only been identified in the waste water, there have been no human cases yet. A lot of people are not testing. Recommendations are the same if you are sick, test with the FDA approved home test. If you are symptomatic and you test negative, you are supposed to repeat the test in 24-48 hours. There are anti-virals available as well as masking in a crowd.

There is a new vaccine trickling out to the market. The CDC has a new program that is similar to the vaccine for adults' program where it will provide people who are uninsured or under insured a free COVID 19 vaccine. The ECHD will not be holding vaccine clinics, we are treating this as another reportable communicable disease. RSV and flu vaccines have also become available

Unfortunately, we are seeing many opioid related overdose cases, as well as non-opioid overdose deaths. 87% of the opioid deaths this year were from fentanyl and cocaine. We are seeing a lot of stimulants and stimulants without opioids that are causing overdose deaths. This is a problem nationally also. With our settlement funds we will be using them for a large advertising campaign.

The EC Medical Examiner's office is starting its last phase of renovations. Dr. Burstein also said that there will be a press conference announcing our new ambulance service that will initially serve rural areas that do not have a consistent ambulance service at the present time. This may be able to grow and expand.

#### V. OLD /NEW BUSINESS

There was no old business. Under new business Dr. Burstein brought up Dr. Jonathan Daniels's vacancy on the BOH. There has also been no interaction regarding the other city appointments. She asked Marilyn Tuberdycck if she had any recommendations of other retired Sanitarions that would be willing to be on the BOH.

The next meeting was tentatively scheduled for January 23, 2004. The meeting was then adjourned.