

CITY OF ENGLEWOOD

BOARD OF HEALTH REGULAR MEETING

November 10, 2015

1. The regular meeting of the Board of Health, City of Englewood, Bergen County, was called to order at 8:04 p.m. by JoEllen Bostick, President, Board of Health.

MEMBERS PRESENT:

JoEllen Bostick, President; Dr. Lisa Wisotsky, Vice President; Bertha-Nora Acosta; Daniel Daniel; and Dr. Ketsia Alerte-Sadler (arrived 8:06 p.m.).

ABSENT/with apology:

Stephanie Davis and Dr. Aliza Solomon.

ALSO PRESENT:

James Fedorko, Director, Health Services/Health Officer/Secretary to the Board; Richard A. Lustgarten, Esq., Board of Health Attorney (via teleconference); and Janet Hart, Confidential Executive Secretary.

Mr. Fedorko read the Open Public Meetings Statement. All stood to recite the Pledge of Allegiance.

2. A. Items for Approval

Motion to approve 2. A. i. (Minutes of October 14, 2015 Meeting-Open/Closed); 2. A. ii. (Receipts-October, 2015-\$13,764.00); 2. A. iii. (Bills-October, 2015-\$9,499.61); 2. A. iv. (Employee Reports-October, 2015); and 2. A. v. (Digest of Mail-October, 2015).

Motion to approve items 2. A. i. – v. was made by Dr. Wisotsky, and seconded by Ms. Acosta. Motion was approved 4-0.

2. B. Retail Licenses

Mr. Fedorko stated that there were no licenses to be approved for October, 2015.

2. C. i. Board Liaison Reports

There were no Board Liaison Reports for October, 2015.

ii. Committee Reports

Dr. Wisotsky, Budget Committee member, requested a copy of the 2016 Department budget proposal. Mr. Fedorko said the Budget Committee would be provided with copies after the meeting.

At this time in the meeting, a request was made to discuss an item of Old Business, ahead of the ordinances to be adopted. The Board agreed to this change in order.

OLD BUSINESS

6. Stigma-Free Initiative

Mr. Daniel reported that there had been a meeting of the Stigma-Free Task Force on November 3rd, and that additional training sessions had not taken place, due to lack of participation. Mr. Daniel said there was a delay in funding from the Municipal Alliance, and he asked the Board to consider donating funds for flyers and banners. Mr. Lustgarten said if there was money in the budget, the Board would be able to do this, as it is a health-related issue. Mr. Daniel said a town hall type meeting is being planned for Spring, 2016, and that publicity would be very important. He said he believed the City would be donating \$500 towards these expenses. Dr. Wisotsky suggested that if the City would donate \$500 towards this event, the Board would match that amount.

Mr. Lustgarten suggested that, if the Board was in agreement, they do a Resolution stating the Board would contribute \$500 to the Stigma-Free Initiative for the purpose of supporting their advertising needs, provided the City of Englewood gave an equal amount. Motion to approve Resolution R15-14 was made by Dr. Wisotsky, and seconded by Dr. Sadler. Motion was approved 5-0.

7. Retirement of Sr. Exec. Secretary/Hiring of Exec. Secretary/Dep. Lic. Clerk

Mr. Fedorko reported that the Sr. Executive Secretary of the Department had retired after 38 years of service. The Department celebrated this accomplishment with a dinner and a plaque, for which she was very appreciative.

ORDINANCES

3. 15-07 Fees and Fee Schedule (Public Hearing/Adoption)

Motion to read the ordinance by title only was made by Dr. Wisotsky, and seconded by Dr. Sadler. A roll call vote ensued:

Bertha-Nora Acosta	-	"Yes"	Ketsia Alerte Sadler	-	"Yes"
JoEllen Bostick	-	"Yes"	Aliza Solomon	-	Absent

Daniel Daniel - "Yes" Lisa Wisotsky - "Yes"
Stephanie Davis - Absent

Motion was approved 5-0.

Mr. Fedorko read the title of Ordinance 15-07, "An Ordinance Revising Chapter 6 of the Health Code of the City of Englewood, in the County of Bergen, New Jersey, 'Fees and Fee Schedule.'"

Motion to open the time for public comment was made by Dr. Sadler, and seconded by Dr. Wisotsky. A roll call vote ensued:

Bertha-Nora Acosta - "Yes" Ketsia Alerte Sadler - "Yes"
JoEllen Bostick - "Yes" Aliza Solomon - Absent
Daniel Daniel - "Yes" Lisa Wisotsky - "Yes"
Stephanie Davis - Absent

Motion was approved 5-0.

There were no comments or questions from the public, so a motion to close the time for public comment was made by Dr. Wisotsky, and seconded by Dr. Sadler. A roll call vote ensued:

Bertha-Nora Acosta - "Yes" Ketsia Alerte Sadler - "Yes"
JoEllen Bostick - "Yes" Aliza Solomon - Absent
Daniel Daniel - "Yes" Lisa Wisotsky - "Yes"
Stephanie Davis - Absent

Motion was approved 5-0.

Mr. Fedorko read the Resolution to Adopt Ordinance 15-07, entitled "An Ordinance Revising Chapter 6 of the Health Code of the City of Englewood, in the County of Bergen, New Jersey, 'Fees and Fee Schedule.'"

Motion to adopt Ordinance 15-07 was made by Dr. Wisotsky, and seconded by Mr. Daniel. A roll call vote ensued:

Bertha-Nora Acosta - "Yes" Ketsia Alerte Sadler - "Yes"
JoEllen Bostick - "Yes" Aliza Solomon - Absent

Daniel Daniel - "Yes" Lisa Wisotsky - "Yes"
Stephanie Davis - Absent

Motion was approved 5-0.

4. 15-08 Temporary Retail Food Establishments (Public Hearing/Adoption)

Motion to read the ordinance by title only and open the time for public hearing was made by Dr. Wisotsky, and seconded by Ms. Acosta. A roll call vote ensued:

Bertha-Nora Acosta - "Yes" Ketsia Alerte Sadler - "Yes"
JoEllen Bostick - "Yes" Aliza Solomon - Absent
Daniel Daniel - "Yes" Lisa Wisotsky - "Yes"
Stephanie Davis - Absent

Motion was approved 5-0.

Mr. Lustgarten stated that the title of Ordinance 15-08 is "Temporary Retail Food Establishments."

There were no comments or questions from the public, so a motion to close the time for public comment was made by Dr. Wisotsky, and seconded by Dr. Sadler. A roll call vote ensued:

Bertha-Nora Acosta - "Yes" Ketsia Alerte Sadler - "Yes"
JoEllen Bostick - "Yes" Aliza Solomon - Absent
Daniel Daniel - "Yes" Lisa Wisotsky - "Yes"
Stephanie Davis - Absent

Motion was approved 5-0.

Mr. Fedorko read the Resolution to Adopt Ordinance 15-08, entitled "An Ordinance to Amend Chapter 13 of the Health Code of the City of Englewood, in the County of Bergen, New Jersey, 'Retail Food Service Establishments,' to establish fees and inspection requirements for Temporary Retail Food Establishments."

Motion to adopt Ordinance 15-08 was made by Dr. Wisotsky, and seconded by Dr. Sadler. A roll call vote ensued:

Bertha-Nora Acosta - "Yes" Ketsia Alerte Sadler - "Yes"

JoEllen Bostick	-	"Yes"	Aliza Solomon	-	Absent
Daniel Daniel	-	"Yes"	Lisa Wisotsky	-	"Yes"
Stephanie Davis	-	Absent			

Motion was approved 5-0.

5. 15-09 Creating the Position of Deputy License Clerk (Public Hearing/Adoption)

Motion to read the ordinance by title only and open the time for public hearing was made by Dr. Wisotsky, and seconded by Ms. Acosta. A role call vote ensued:

Bertha-Nora Acosta	-	"Yes"	Ketsia Alerte Sadler	-	"Yes"
JoEllen Bostick	-	"Yes"	Aliza Solomon	-	Absent
Daniel Daniel	-	"Yes"	Lisa Wisotsky	-	"Yes"
Stephanie Davis	-	Absent			

Motion was approved 5-0.

Mr. Lustgarten stated that the title of Ordinance 15-09 is "An Ordinance Creating the Position of Deputy License Clerk."

There were no questions or comments from the public. Motion to close the time for public comment was made by Dr. Wisotsky, and seconded by Dr. Sadler. A role call vote ensued:

Bertha-Nora Acosta	-	"Yes"	Ketsia Alerte Sadler	-	"Yes"
JoEllen Bostick	-	"Yes"	Aliza Solomon	-	Absent
Daniel Daniel	-	"Yes"	Lisa Wisotsky	-	"Yes"
Stephanie Davis	-	Absent			

Motion was approved 5-0.

Mr. Fedorko read the Resolution to Adopt Ordinance 15-09, entitled "An Ordinance Creating the Position of Deputy License Clerk."

Motion to adopt Ordinance 15-09 was made by Dr. Wisotsky, and seconded by Mr. Daniel. A role call vote ensued:

Bertha-Nora Acosta	-	"Yes"	Ketsia Alerte Sadler	-	"Yes"
JoEllen Bostick	-	"Yes"	Aliza Solomon	-	Absent
Daniel Daniel	-	"Yes"	Lisa Wisotsky	-	"Yes"
Stephanie Davis	-	Absent			

Motion was approved 5-0.

The Board returned to "Old Business, No. 7." (Retirement of Sr. Exec. Secretary/Hiring of Exec. Secretary/Dep. Lic. Clerk). Mr. Fedorko added that the Department had a candidate for the position of Executive Secretary/Deputy License Clerk and hoped to have the position filled by December 1, 2015.

8. Flu Shot Clinics

Mr. Fedorko reported that 226 flu vaccines were administered in 2014, and 227 in 2015 so far.

NEW BUSINESS

9. Discussion of 106-11, Dogs, of the City Code

Dr. Wisotsky requested that the discussion on dogs and the City Code be delayed a few minutes, as there were people on the way who wished to participate in that discussion.

10. Discussion of BOH Attorney Proposals

Mr. Fedorko reported that the request for proposals for a new Board of Health Attorney was posted on October 30, and it had been advertised in *New Jersey Law*, at a cost of \$395.50 for one week. He said it had also been published in *The Record* legal ads. He stated that no one as yet had answered the ads.

Mr. Lustgarten inquired if a scope of services had been included in the Requests for Proposal. He said if it is not included in the RFP, it could be sent separately to any interested attorneys. He would say the bulk of the work is to attend the Board meetings, approve language for ordinances and special resolutions, and be available for consultation, mostly by phone, if any special issues come up. He said there might be a three hour Court appearance every 6-7 weeks also.

11. Public Posting of Inspection Reports

The regulations of the Board of Health currently state that the evaluation placard (Satisfactory/Unsatisfactory/Conditional) shall be immediately located in a conspicuous place near the public entrance of the establishment in such a manner that the public may view the placard. Mr. Fedorko stated that the placard could be located anywhere in the establishment that is conspicuous. The Englewood Food Council would like the placard to be located at the

doorway of each establishment, and he said the Department REHS's are in agreement with that. Mr. Fedorko said if the Board would like to discuss this idea, it could be put on the agenda for the January, 2016 Board meeting.

Mr. Lustgarten stated that if the Board decides it wants to adopt this idea, there should be a window, probably 60-90 days, from the date of adoption to the date of implementation. The Board agreed to consider it in January.

The Board returned to item 9. on the Agenda: Discussion of 106-11, Dogs, of the City Code

Mr. Lustgarten said the questions under consideration are, if the local dog ordinances are sufficient, if you are dealing with a vicious dog issue, and if you are able to regulate some dog breeds more stringently. He read from New Jersey Statutes Annotated, 4:19-17, titled "Legislative Findings and Declarations." He said it is a section of the State Statutes relating to dogs and animals. It says the following:

"The Legislature finds and declares that certain dogs are an increasingly serious and widespread threat to the safety and welfare of the citizens of this State, by virtue of their unprovoked attacks on, and associated injury to, individuals and other animals, that these attacks are in part contributable to the failure of owners to confine and properly train and control these dogs. That existing laws at the local level inadequately address this problem, and therefore it is appropriate and necessary to impose a uniform set of State requirements on the owners of vicious or potentially dangerous dogs."

It is Mr. Lustgarten's opinion that the State has pre-empted this entire subject. He said the statutory procedure is, if we receive a report of an incident with a dog, that is either a vicious or potentially dangerous dog, a summons is issued, there is a full hearing before a Municipal Judge, who can make and will make a legal and factual determination as to whether the dog is a vicious dog or a potentially dangerous dog. Under the proper circumstances, the Judge can order the killing of the animal if the situation is that egregious.

Mr. Lustgarten stated that he thinks the State's language is pre-emptive, and secondly, the procedures that are set forth in the entire statute are very comprehensive. He said he was also advised that Englewood was involved in some litigation years ago where they tried to ban a particular breed of dog, and it was taken to Court, where Englewood lost, on the basis that any breed of dog can be vicious and potentially dangerous under certain circumstances.

Mr. Lustgarten does not feel the Board should amend any of Englewood's dog ordinances.

12. Board Digest

Mr. Fedorko stated the customary procedure of Department staff to forward pertinent health-related news articles to Board members, include a summary page of all articles sent that month, called the Board Digest, in the Board Packets, and keep a permanent record of that summary page. He requested the omission of the Board Digest from the Board Packets and the permanent

record book. It was the consensus of the Board to continue receiving the articles via email, but to omit the Board Digest from the Board Packets and the permanent record.

PUBLIC COMMENT

Motion to open the time for public comment was made by Dr. Wisotsky, and seconded by Ms. Acosta. Motion was approved 5-0.

Michael Erber, 92 Booth Avenue

Mr. Erber applauded the Department for making sure the restaurants in the City are up to code. He stated that a neighbor of his on Booth Avenue owns a potentially dangerous dog, which is allowed to run at large. He said the people and children in that neighborhood are afraid to go outside, and that this dog owner has a dog of the same breed. In the past, that dog mauled a child. The safety of his family is his primary concern. He thanked the Board for their consideration.

The Board Attorney stated there are ordinances already prohibiting dogs from running at large. He said if someone would come to the Health Department, who is willing to testify that the dog is running at large, it could be prosecuted. The Board Attorney asked Mr. Erber what kind of law would he suggest the Board of Health adopt to effect the situation in the neighborhood of Mr. Erber. Mr. Erber replied that if it is not possible to outlaw certain dogs because of their category, then an owner who has had an instance of having one of these categories of dogs, that has mauled a child or has been running at large and terrorizing a neighborhood, then he could lose his right to have a certain class of dog.

Mr. Lustgarten said if someone wanted to take a dog owner to Court for being an irresponsible dog owner, they would have to take the case to Superior Court to get an injunction. The local Board of Health has no jurisdiction to handle that type of situation. The Board of Health can only ask the Animal Control Officer to enforce the Ordinances and State statutes that we have.

Lisa Farkovits, 94 Booth Avenue

Ms. Farkovits reported that she has two children who have been attacked by the dog in question. One of them was bitten on her sleeve. She said there were seven Police Reports of this dog running at large on their block prior to the incidents with her children. Ms. Farkovits said she has filed a civil complaint against the dog owner. She went to Court with her complaint, and the dog owner was permitted to plead down, with the stipulation that if his dog was caught running at large again, the owner would be in contempt of Court. Since then, the dog has been seen in several of the neighbors' yards. She apologized for not following up on these complaints before now, but feels they have done all they can on a community level. She feels that the dog owner has no regard for the welfare of the children who live on their block. She feels the City should assist them in the process of taking the dog owner to Superior Court, as the entire area is being terrorized. She said they need the help and guidance of the Board of Health and City of Englewood.

Mr. Lustgarten repeated that the complainants would have to go to Superior Court if they want to prevent this dog owner from having this dog. He said the kind of relief they are asking for is beyond the jurisdiction of the Board of Health. He recommended that they speak to the Animal Control Officer of Englewood regarding the recent complaints and if they are willing to testify, the dog owner may be held in contempt of Court.

Kevin Lake, 320 N. Woodland Street

Mr. Lake referred to State Statute 4:19-36, which states that New Jersey is a BSL (breed-specific legislation) pre-emptive state. It states that the provision of this Act shall supercede any law, ordinance, or regulation concerning any vicious or potentially dangerous dogs, any specific breed of dog, or any other type of dog, inconsistent with this Act. What this says is that State Statute pre-empt any Municipal law which is inconsistent with it. He stated that in 1999 the City of Englewood adopted an Ordinance which prohibited certain breeds of dogs, like bull terriers, and pit bulls. In 2006 Englewood was sued by the American Dog Owners Association and two residents. The Dog Owners Association won and the City of Englewood had to repeal its law because the Court found that the breed specific law violates State law.

Mr. Lustgarten agreed with Mr. Lake on State Statute 19-36, which is the implementation of the legislative intent of 19-17.

Mr. Lake said that the City of Englewood has dog ordinances, but it cannot enact ordinances prohibiting certain breeds of dogs. He agreed with the complainants that no one should be terrorized in their own home.

Mr. Lustgarten stated that the complainants need examples and proof of current incidences of the dog running at large before anything further can be done. He said when they have that, they should contact the Health Officer or the Animal Control Officer immediately, and they would move forward on it. He said the witness to the acts would have to be the person to testify in Court.

There being no further comment from the public, a motion to close the time for public comment was made by Dr. Wisotsky, and seconded by Dr. Sadler. Motion was approved 5-0.

ADJOURN

There being no further business to discuss, motion to adjourn was made by Ms. Acosta, and seconded by Dr. Sadler. All members voted "Aye," in favor. Motion was carried.

The meeting adjourned at 9:30 p.m.

Respectfully submitted,

James Fedorko
Secretary to the Board