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MINUTES OF THE MEETING OF THE BOARD OF THE BOSTON PUBLIC HEALTH COMMISSION Wednesday, September 18th, 2019

A meeting of the Board of the Boston Public Health Commission (“Commission”) was held on Wednesday, September 18th, 2019 in the Hayes Conference Room, 2nd floor, 1010 Massachusetts Avenue, Boston, MA 02118.

Board Members Present

Manny Lopes, Chair, Philomin Laptiste, Myechia Minter-Jordan, Jennifer Childs-Roshak, Rebecca Gutman

Also Present

Anne McHugh, Iphigenie Blanc, Leno Moralles, Edgar Duran, Maureen Balaguera, Ate Shiferaw, Deborah Mendez, Sarah Kuruvilla, Susan Belvis, Rob Goldstein, Aunnakalia Boyce, Caitlin McLaughlin, Puneet Sharma, Eugene Barros, Cynthia Zhas, Sana Chowdhry, Austin Cho, Anthony Alvarez, Justine Newman, Lena Spear, Tyler Brown, Steve Simmons, Shvuti Agrawal, Alyssa Laxer, Beth Baker, Leslie Karnes, Taylor Jolly, Leon Bethune, Margaret Reid, Tom Lane, Kathryn Shine, Rani Viroja, Hanalei Fong, Grace Tanguilig, Jacqueline Hogan, Julia Arel, Nikysha Harding, PJ McCann, Marco Damica, Gerald James, Raina Morris, Xiang-Zuo Pan, Abid Khan, Keegan O’Hara, Narain Badhey, Gerry Thomas, Tim Harrington, Patricia Leary, Shekeima D, Batool Raza, Olivia Scioletti

Proceedings

Chairperson’s Comments

At approximately 4:05 p.m., Chairperson Lopes welcomed Board members, staff, and members of the public and gave an overview of the agenda. He noted that today’s panel will focus on the timely issue of the youth vaping epidemic. Given the pressing threat that youth vaping presents, and the generational legacy of racial disparities in menthol tobacco advertising and use, Mayor Walsh has tasked BPHC staff and the Board to gather research and present policy options for preventing Boston’s youth from entering into a lifetime of nicotine and tobacco dependency.

I think we all know that Boston is a leader in the field of local tobacco control, most recently we as a Board of Health took the step of raising the sales age to 21 and restricting the sale of flavored tobacco and vaping products. You’ll see some data in the presentation tonight that strongly suggests that these strong policies work.

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What we are seeing now with the explosive expansion of vaping products risks reversing decades of gains in reducing youth tobacco use. I look forward to hearing more about this important issue and our path forward.

Acceptance and Approval of June 11th, 2019 Minutes

A motion was made, seconded, and approved unanimously by roll call to approve the minutes for the June 11th, 2019 meeting.

Executive Office Report: Monica Valdes Lupi, JD, MPH

Ms. Valdes Lupi thanked Dr. Myechia Minter Jordan for her years of outstanding service to the Board, and read into the record a proclamation from Mayor Martin J. Walsh celebrating Dr. Jordan's tenure as a Board member and naming September 18th, 2019 Dr. Myechia Minter Jordan Day.

Chairperson Lopes also commented that Dr. Jordan has been a great friend and great partner and will be missed on the Board.

She also made the following remarks:

The Division of Violence Prevention supported a youth-led "RISE" rally on September 19th to Realize, Interpret, Stop and Empower Boston youth to prevent gun violence. Mayor Walsh and Chief Martinez both accepted invitations from the youth to speak and join them in this inspiring event.

In August, Boston EMS held a graduation and promotion ceremony at Faneuil Hall. There was a ceremony to celebrate 15 EMT recruits, as well as four promotions. The story was covered by many media outlets in town, including NECN and Telemundo.

In June, The Healthy Hearts Barbershop Initiative which began in June was featured by WCVB's Doug Meehan who spent the morning at one of the participating barbershops speaking to clients and barbers about why this program is so effective.

EEE and West Nile Virus: BPHC in coordination the Suffolk County Mosquito Control Project sent out two press releases regarding routine mosquito spraying. We've also been sharing safety tips with the public throughout this mosquito season; last week, after the state raised the risk level for West Nile Virus to moderate, we posted a blog on BPHC.org.

August was National Immunization Awareness Month and September we have Flu Season Planning and Staff Immunization Clinics planned.

Ms. Valdes Lupi thanked Deputy General Counsel PJ McCann for filling in with staffing the Intergovernmental Relations Office while its two positions are filled, and asked him to provide the following updates:

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On the State Legislative front we submitted testimony on House 585/Senate 256: An Act to Promote School Nutrition and House 584/Senate 257: An Act to Expand Access to School Meals which would address youth hunger and would authorize school districts to provide free school meal status to certain children.

On September 10th, BPHC submitted testimony to the Joint Committee on Public Health in support of Senate Bill 1334, An Act to reduce racial disparities in maternal health, which would establish a state-level commission to address inequities in maternal mortality.

On July 15th Homeless Services Bureau Director Gerry Thomas gave testimony to Joint Committee on Families, Children and Persons with Disabilities in support of H.130 An Act establishing a special commission to study women and homelessness.

On July 23rd Leon Bethune, Community Initiatives Bureau Director, testified in front of the Joint Committee on Revenue. Leon spoke on behalf of BPHC and Mayor Walsh in expressing support for HB2623 An Act relative to lead abatement. Since these new regulations have been implemented, in Boston alone we have seen eight times as many lead poisoning cases in 2018 as we did in 2017, and six times as many cases of children with a lead level of concern in the same time period. This resulted in an additional 1,300 staffing hours for our prevention team.

On the City level, Roy Martin, who directs BPHC's Safe and Successful Youth Initiative testified on a City panel alongside Chief Martinez at a hearing held in Mattapan by the Public Safety and Criminal Justice committee to look at funding for violence prevention programming in Boston.

Ms. Valdes Lupi also noted that BPHC's Child Adolescent and Family Health Bureau received a new SAMHSA grant – Boston FIRST (Family Independence, Resilience, Support and Treatment SOC) – to support young children (0-48 months) and their families who are involved with the state child welfare system and are diagnosed with or at risk of serious emotional disturbances. This project will focus on neighborhoods with the largest number of children and families (predominantly Black or Latino) involved with the Massachusetts Department of Children and Families.

Presentations and Discussion: Menthol and Vaping in Boston

BPHC staff members Nikysha Harding, Director, Tobacco Control Program, Eugene Barros, Director, Division of Healthy Homes & Community Supports, and PJ McCann, Deputy General Counsel presented the attached slides.

Mr. Barros gave an overview of the presentation, and noted that Mayor Martin J. Walsh is committed to addressing the youth vaping epidemic has tasked BPHC and partner agencies to advance solutions. He also stated that flavors, including menthol, play a key role in driving epidemic of teen vape use. We know that Menthol plays a unique role in sustaining nicotine

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dependency and a long legacy of targeted industry marketing and the density of retail outlets that sell and advertise menthol products have led to disproportionate menthol tobacco use among Black residents. Reducing tobacco use would advance Imagine Boston 2030 goal of reducing disparities in premature mortality between neighborhoods. Therefore, the health risks associated with menthol tobacco and nicotine products justify further restrictions on their sale.

Ms. Harding's remarks included that menthol is particularly dangerous for young people. When considering youth initiation of tobacco products, studies show that 81% of youth initiated tobacco use with a flavored tobacco product and 57% of youth smokers smoke menthol cigarettes. Menthol is a popular choice for the novice smoker because menthol reduces throat irritation and makes smoking feel smoother so that the inexperienced smoker is better able to tolerate it.

Historically, menthol has been marketed as "smoother, refreshing and cooling." It's this cooling sensation that masks the harshness and taste of tobacco making it easier to inhale. Because it is easier to inhale, menthol users tend to inhale more smoke therefore consuming more nicotine, increasing their nicotine dependence.

One major similarity between the use of traditional cigarettes and e-cigarettes is that "flavor" is a key driver in youth initiation. In 2018, 68% of high school e-cigarette users use flavored e-cigarettes and the use of mint or menthol flavored e-cigarettes was 51%.

Here in Boston, we are halfway there as we have taken measures to address this trend. As I have previously mentioned, the sale of flavored tobacco products, other than mint or menthol, has been restricted since 2015 and can now only be sold at adult-only retail stores.

The long-term trend of youth smoking is perhaps the biggest public health success story in our time. When looking at national data, in 1976, 29% of 12th graders reported daily use of cigarettes. In 2018 the rate decreased to 3.6%.

Local data shows Boston Public High School students reporting smoking cigarettes in the last 30 days has declined drastically. In 2017 it was 3.1% down from 20% in 1995. Only 0.4% report smoking cigarettes on 20 or more days in the past month. There are a lot of local policy changes throughout this period that we believe helped to drive these dramatic reductions.

Note that it looked like e-cigarette use rates looked like they had started to decrease after 2015 but spiked in 2017. What we are most concerned about here is a) the spike in e-cigarette use in 2017-2018, and b) the overall combined nicotine and tobacco rate is spiking as a result.

There are health equity dimensions to our tobacco control efforts as generally, the most disadvantaged populations have the highest smoking rates. While tobacco use rates are on the decline overall, the use rates for black adults remains high at 30%. We know that 9 out of 10 Black smokers prefer menthol cigarettes. We also know that blacks are less successful at

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quitting smoking than whites. Although blacks usually smoke fewer cigarettes and start smoking cigarettes at an older age, they are more likely to die from smoking related diseases than whites. (CDC). Lastly, smoking prevalence is decreasing, the use of menthol cigarettes is increasing, leading us to believe that menthol products may play a role in slowing down the progress in reducing tobacco.

The Imagine Boston 2030 city master plan Health Equity Goal is to improve health outcomes for all Boston residents and reduce disparities in premature mortality between neighborhoods.

Looking at premature mortality by neighborhoods citywide, we see that the rates have been steadily decreasing, but residents in Roxbury consistently experience the highest rates of premature mortality.

This is relevant to this presentation because tobacco use remains the leading cause of death nationally. Tobacco use is a major contributor to the three leading causes of death among African Americans—heart disease, cancer and stroke. Life expectancy for smokers is at least 10 years shorter than for nonsmokers.

The major causes of excess mortality among smokers are diseases that are related to smoking, including cancer and respiratory and vascular disease. With cancer mortality, we've seen statistically significant decreases from 2011 to 2017 across all races, though the rate for black Boston residents is highest. We know that smoking increases the risk of developing lung cancer by approximately 25 times.

Why do we see persistent smoking-related illness in communities of color?

A large evidence base shows that there is a disproportionate concentration of menthol advertising in communities of color. A local study compared tobacco advertising in Dorchester and Brookline. The study found that the advertising in Dorchester is larger, promotes menthol, lower advertised price, almost two times more likely to be located near a school and menthol advertising is five times more prevalent in Dorchester.

Despite the master settlement agreement that restricted tobacco advertising, the tobacco industry are still using advertising to promote tobacco products to youth, minorities and low income populations.

As part of BTCP's contract with DPH, we regularly conduct pricing surveys to monitor pricing trends and tobacco product availability. When this data was analyzed, several findings were made. The racial makeup of a block group was associated with lower prices of menthol cigarettes. 42% of retailers in Roxbury were selling 25 cents or more below the required minimum price compared to only 4% in Beacon Hill and Back Bay. The study also found that they pack of Newports (menthol cigarettes) was cheapest in Roxbury and the most expensive in Beacon Hill and Back Bay.

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Switching gears to youth e-cigarette use and exposure to advertising which we know is associated with increased youth e-cigarette use. Reports show that youth are being exposed to e-cigarette advertising in a variety of ways. The biggest source of exposure is at retail stores followed by the internet and TV/movies.

As cigarette smokers are being replaced by e-cigarette users the tobacco industry continues to spend millions of dollars in the marketing of these products. There are several similarities between menthol and nicotine industry strategies including: targeting marketing- menthol marketing was and continues to target blacks and inner city communities and e-cigarettes marketing targets young people; point of sale marketing- from storefront ads, counter pads, to the take a penny, leave a penny trays we are seeing similar point of sale marketing strategies; pricing strategies that I described when comparing Roxbury with Beacon Hill and Back Bay; and most notably is the marketing implying that these products are less harmful than conventional cigarettes; in the mid-90's some of the biggest tobacco salesmen were medical professionals who dispelled the growing concerns of the health risks related to smoking menthol cigarettes. Now e-cigarettes are being promoted as the safe alternative to smoking. But these products have not been approved by the FDA as safe or effective cessation drugs. And we know with the recent surge in respiratory illness and death, that, again, the preferred method for quitting or reducing smoking is to use FDA-approved cessation therapy paired with counseling.

Currently 801 retailers permitted to sell tobacco products. 754 all ages locations i.e. 7 Eleven, gas stations and neighborhood convenience stores; allowed to sell tobacco and nicotine products but prohibited from selling flavors other than mint and menthol. 47 adult only retail stores- permitted to sell flavored tobacco and nicotine products; currently 90% of their revenue must be from tobacco, nicotine and paraphernalia. This is an enforcement challenge, and we're seeing that products other than tobacco and nicotine are attracting youth to the stores and undermining the purpose of the regulation.

Generally, we see high compliance among Boston retailers, though signs of increased noncompliance. After 21+ regulation, compliance rate using 19-year-old youth access agents is lower. Some retailers skirting regulations through after-hours sales and hidden products. Handful of problematic retailers selling during their permit suspension and repeatedly selling restricted products. There are concerns with the lack of compliance at adult-only retail stores (selling to minors and smoking in the workplace). We will continue to conduct targeted education and enforcement to improve compliance. We also know that despite our efforts, nicotine products remain too easy for young people to buy in the community.

Mr. Barros highlighted a community forum that BPHC, HHS, held in collaboration with the Codman Square Neighborhood Council and the BOLD Teens.

Mr. McCann said Before I get into the specifics of the proposed amendment, I wanted to note that Mayor Walsh and Chief Martinez have also been working with Superintendent Cassellius to

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reach our young people about vaping. Mr. McCann invited Chief Martinez with an opportunity to summarize efforts to address vaping in BPS schools.

Chief Martinez said he appreciates the information presented and the work. Mayor Walsh and I agree that this is an issue that takes us steps backwards and needs a multi-pronged approach. In addition to the proposed amendments that we'll be looking at, we're also looking at efforts to: update and revise current District Wellness Policy regarding Tobacco Free Environment Policy with detailed information on e-cigarettes and vaping risks for young people; launch a district-wide public awareness prevention campaign to reach students at all grades on the risks associated with smoking and specifically vaping and e-cigarettes; offer professional development trainings and workshops on vaping and e-cigarettes to teachers, staff and other school personnel to educate the system on the details of these products, their impact and health risks for young people; expand efforts to ensure comprehensive health education curriculum, that is inclusive of substance use prevention strategies, is taught in all schools according to our District Wellness Policy because we know that health literacy is critical to the health and well-being of all BPS students; provide referrals to existing cessation programs. We know that so much of the work to reduce smoking has been led by young people, so we know how important it is that we don't lose ground on this issue. Again, on behalf of Mayor Walsh, I appreciate the work that is being done here and we are glad to stand with you as we explore.

Dr. Childs-Roshak offered kudos for the important work.

Ms. Laptiste asked about consequences for retailers. Mr. McCann mentioned that there is an escalating fine structure, and Ms. Harding added that for the first citation, the fine is 200, the second within 24 months is \$400 and carries a suspension of 7 days, the third is \$600 and a 30-day suspension and a 4th is \$800 with a 60 day suspension. We currently have a few retailers that are serving 60-day suspensions. Ms. Harding noted challenges with enforcing suspensions.

Ms. Gutman spoke from her experience as a parent and talking with her son about his experiences in high school and the level of exposure our youth face.

Mr. Lopes added that he applauds the Mayor, Chief, and staff on this issue. It's never easy to address issues that have an impact on the marketplace, but this is one issue that fits squarely within our mission.

Dr. Childs-Roshak asked if the penalties are strict enough. Mr. McCann noted that we did add language in 2015 to give us discretion to revoke permits for what may be a handful of repeat offenders, so that remains an option.

Ms. Valdes Lupi noted that she went on a ride-along with compliance officers and noted that staff do a tremendous job keeping up with compliance efforts, which may require us to do some more thinking about the number of staff dedicated to this work.

Mr. McCann noted that given the information that has been presented, staff recommend amendments to the Board's Youth Access Regulations that would: remove exemption for mint and menthol flavored tobacco and nicotine sales restriction, which would treat menthol the same

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as other flavors, allowing for menthol to be sold in verified adult-only tobacco retailers. We also propose to increase accountability and youth access restrictions for 21+ adult-only shops and strengthen front door retailer ID checking requirements as well as restrict the sale of products that attract young people.

He noted that this adds language stating “An Adult-Only Retail Tobacco Store as defined in this regulation shall request and examine a government-issued photographic identification from all entrants immediately upon entry to the establishment.”

Another persistent challenge with these 21+ stores has been enforcing the provision that allows them to sell products “incidental to” the sale of tobacco and nicotine. By guideline, we have set a threshold requiring that products other than tobacco, nicotine, and paraphernalia cannot account for more than 10% of revenue. In the definition of Retail Tobacco Store in Section two, Subsection 18 we add “Adult-Only” to the definition for clarification (we’ll have to move to the correct alphabetical position). We strike “in which the sale of other products is merely incidental,” and also add “The Executive Director may establish additional guidelines to strengthen age restriction compliance.” The draft also clarifies that Adult-only stores are subject to restrictions on minimum cigar packaging and stand-alone displays. That’s in Section 4.

Chief Martinez said that it’s important to remember that we’re thinking about young people. If we’re considering making this policy change, the Mayor and I agree that we need to make sure that we are enforcing in these 21+ stores appropriately, especially if we are putting the last flavored products in these stores. These pieces are tied together.

Dr. Jordan said I agree that we need to increase compliance as we think about marketing and density in the community. Mr. McCann noted that staff do have some discretion as new adult-only stores seek to open, and we have been mapping the locations of these businesses as they’ve opened. The first entrants to the market have been relatively evenly distributed throughout the city, though it is something that we will continue to monitor. We will continue to work with retailers to look at storefront in advertising. We do think that removing menthol products from the 750 all ages stores will decrease visual exposure to these products and advertising for them. We think eventually some of these advertisements will come down as a matter of course. We think that our regulations and proposed amendments are a strong first step.

Mr. Lopes asked about the information presented about pricing in Roxbury and communities of color. Ms. Harding said that it is targeted marketing, and distributors play a strong role in setting prices.

Ms. Childs-Roshak asked if it is possible to ban menthol products altogether. Mr. McCann noted that the legal analysis is somewhat different for nicotine products and tobacco products. There is more caselaw on federal tobacco law. In short, regulating the sale of products presents different litigation risks than banning them outright. That is behind some of these exemptions.

The Board took a vote to move forward with a comment period, which was approved unanimously.

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Board is authorized to adopt and amend reasonable health regulations under Enabling Act (G.L. c. 111, App. s. 2-7) and state law governing boards of health (G.L. c. 111, s. 31). It is our opinion that the proposal is well within the authority of the Board and is consistent in terms of subject matter with what we have done before. The amendment process under state law includes publishing for two weeks prior to a vote. We typically do much more than that to engage the community and make sure there is ample opportunity to engage in the comment process.

We propose to hold a hearing on November 7th and have a public comment period that runs to November 8th. We propose a 60-day implementation period from the vote to approve. Following the public comment period, there will be an additional presentation to the Board summarizing public comment and any further amendments before a vote to approve.

Adjournment

At or around 5:20pm, a motion and vote to adjourn were taken and approved.

Attest

// Susan Belvis

Board Secretary, Boston Public Health Commission