



MINUTES OF THE MEETING OF THE BOARD OF THE BOSTON PUBLIC HEALTH COMMISSION

A meeting of the Board of the Boston Public Health Commission (“Commission”) was held on Monday, November 25th, 2019 in the Hayes Conference Room, 2nd floor, 1010 Massachusetts Avenue, Boston, MA 02118.

Board Members Present

Manny Lopes, Chair, Philomin Laptiste, Kate Walsh, Jennifer Childs-Roshak, Rebecca Gutman, John Fernandez

Also Present

Susan Belvis, Adam C. Ponte, Michael Brangwynne, Dave Susich, Helen Ayanian, Wenhui Feng, Jennifer Lo, Johnna Murphy, Devin Larkin, Jen Tracey, Beth Baker, Leon Bethune, Eugene Barros, Margaret Reid, Gerry Thomas, Brett Phillips, Taylor Jolly, David Pia, Trinieste Polk, Heather MacEwen, Tierney Flaherty, Anne McHugh, Bradley Cohen, Caitlin McLaughlin, PJ McCann, Jim Foley, Cindy Zhou, Adam Tapply, Rob Goldstein, Cathi DiVileskis, Molly Haggerty, Stacey Kokoram, Uchenna Ndulue, Greg D’Agostino, Gerald James, Derrick Young, Debra Paul, Nestor Rijo-Figueroa, Grace Connolly, Nikysha Harding, Becky Crosson, Francisco Marte, Chief James Hooley, Migdalia Mercado, Tim Harrington

Proceedings

Chairperson’s Comments

At approximately 4:10 p.m., Chairperson Lopes welcomed Board members, staff, and members of the public and gave an overview of the agenda.

Executive Office Report: Monica Valdes Lupi, JD, MPH

Ms. Valdes Lupi delivered the following remarks:

BPHC, its bureaus and programs were mentioned in more than 200 news articles between the months of September and October. These includes several follow up articles following the Board of Health’s direction to BPHC staff to advance forward a public comment and hearing process regarding proposed changes to tobacco control regulations, including a TV appearance by Jen Lo on BNN, among others. However, two infectious disease incidents let the way in media relations and mentions, the first regarding was the case of the measles that we mentioned at the previous meeting, and more recently the second two cases of meningococcal disease in residents.

When we last met, BPHC had just released a public health and media advisory regarding the first case of measles since 2014 in a Boston resident. The measles coverage was broad, and included all local TV stations (i.e. WCVB, WHDH, Boston25, Telemundo), news radio stations (i.e. WBUR, WBZ) and print outlets (such as the Boston Globe). Their story was also picked up by national media, including Fox News and USA Today. These articles played an important role in making the public aware of the appropriate steps that they ought to take related to potential exposure and vaccination.

Another public health and media advisory was issued on October 23rd regarding two cases of meningococcal disease in Boston. The two cases occurred in toddlers associated with daycare centers specializing in serving children who have experienced homelessness. Given several factors, the decision to not hold a press conference was made. However, significant media coverage was earned, including TV (WCVB, NBC Boston, among others), radio (WBZ, and others) and print (Dorchester Reporter, among others).

Of additional importance is a story about the reunion of a Boston EMS EMT with a patient he saved 30 years earlier. That patient went on to become a firefighter and EMT himself. Kudos to our Communications team who successfully pitched the story. The reunion was caught live by WCVB and covered also by the Boston Herald.

Once again, the City of Boston secured a Gold Medal rating from CityHealth. Boston was only one of 8 cities to be awarded the highest rating from the initiative, and one of the few cities in the United States to receive this distinction year after year from CityHealth. The announcement was made November 13, 2019. CityHealth is an initiative of the de Beaumont Foundation and Kaiser Permanente, with data curated by Temple University.

Over the last 3 years, traffic to and the use of BPHC.org has changed dramatically according to a review of website analytics conducted by the Communications Office. For a three-year period running from August 1, 2016 – July 31, 2019 the website saw nearly 820,000 users, with almost 87% of them being new users during that period.

Over this three-year period, BPHC.org saw a 24% increase in monthly users on average. This data suggests successful marketing approaches were launched during this period leading to the acquisition of more users than previously.

In total, 220,792 people accessed BPHC.org during this period from an IP address in Boston, accounting for about 27% of all users. However, the website was visited by users in other key locations across the United States, including New York, California, Virginia, and Georgia, among others. This suggests that the website is providing expert content and helping to support BPHC's position itself as a thought leader among public health departments nationally. Organic search result analysis also supports this with key topics such as "What is Health Equity?" and others being in the top 10 searched items leading to BPHC.org for users from both within Boston and outside Boston. Finally, in 2019, BPHC.org was able to add tracking to its website analysis efforts and over the three-month trial period, 5 of the top 10 items downloaded from BPHC.org were its latest Health of Boston data reports.

These data reviewed together clearly suggest BPHC has successfully grown the number of people using its website (BPHC.org) as a resource for health related information in Boston and that the content and manner in which it provides content on its website is aligned with emerging public health trends and user's increasing desire to access data for their own analysis.

A comprehensive review of website data is included in the forthcoming 2020 BPHC Communications Plan, which outlines specific recommendations BPHC can take to build on the successes identified in the review and address obvious weaknesses that are associated with the website being built on outdated technology.

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I’ll now turn it over to our Director of IGR, Tierney Flaherty for her report.

Ms. Flaherty gave the following report: Good afternoon all. I want to start by introducing Derrick Young, the IGR office’s new Policy & Strategy Specialist. Derrick has a strong health policy background and comes to us from the Leadership Brainery, a nonprofit he founded that serves as a pipeline program for first generation and diverse college students to gain access to graduate programs. We’re excited to have him on board.

Since the last time we met, Chief Hooley testified at the State House before the Joint Committee on Public Health in support of Senate Bill 1339, An Act relative to public safety and public health workers protections. This bill is meant to help workers, like our Boston EMS personnel, who experience potential infectious disease exposures from blood or body fluids. It would make it easier to petition the courts in cases where a patient is unwilling to give consent for testing. The bill remains under consideration by the Committee. Thank you, Chief.

We’ve also been busy with the City Council. On October 25th, Councilor Flynn called a hearing to discuss public health disparities in Boston’s communities of color (Docket #1054). Executive

Director Monica Valdes Lupi provided testimony focused on BPHC's commitment to health equity and racial justice, highlighting the Office of Health Equity, the Health Equity Advisory Committee, the Racial Justice and Health Equity Professional Development Series, the HEiAP initiative, and a recent data brief on racial/ethnic differences in accessing substance use disorder treatment.

Also, on October 25th, Monica Valdes Lupi provided testimony for a hearing called by Councilors O'Malley and Janey regarding black maternal health, racial and gender equity in the healthcare system in the City of Boston (Docket #0396). She focused on BPHC's efforts to address inequities in infant mortality and maternal health through the Healthy Start Initiative, the Healthy Baby Healthy Child Initiative, the CAN, and Healthy Start in Housing. We really want to thank the whole team over at the Bureau of Child, Adolescent and Family Health for their hard work in prepping for this.

And finally, the Council held a hearing on October 28th on domestic violence and sexual assault in the City of Boston, sponsored by Councilor Ed Flynn and Councilor Andrea Campbell. Catherine Fine, the Director of BPHC's Division of Violence Prevention, provided testimony regarding BPHC efforts to address domestic violence and sexual assault, and particularly highlighted the work of the Family Justice Center. Thank you to Catherine and the Family Justice Center team! This was a well-attended hearing that convened a number of different stakeholders, and I think we can anticipate a continued focus on this topic from Councilors Flynn and Campbell in the new year.

Finally, we want to highlight some movement at the state level on bills that are important to us. The distracted driving bill, which would ban the use of hand-held mobile devices while driving except in hands-free mode, was passed by the House and Senate and is currently awaiting the Governor's signature. In another positive development, the Breakfast after the Bell bill, which BPHC has been actively supporting and which we testified on earlier this year, was passed unanimously by the House.

Acceptance and Approval of the October 16th, 2019 Minutes

A motion was made, seconded, and taken unanimously to approve the minutes for the October 16th, 2019 Board meeting.

Proposed Tobacco Control Amendments

Eugene Barros, Director, Division of Healthy Homes and Community Supports, Nikysha Harding, Director, Tobacco Control Program, and PJ McCann, Deputy General Counsel delivered the attached presentation.

Mr. Barros thanked Mayor Walsh, Chief Martinez, Ms. Valdes Lupi and the Board for their leadership in prioritizing protecting youth from nicotine addiction. He gave an overview of the presentation and an update on vaping related illness reports nationally. As of November 20, there are 2,290 confirmed and probable lung injury cases associated with use of e-cigarette, or vaping, products were reported by 49 states (all except Alaska), the District of Columbia, Puerto

Rico, and the U.S. Virgin Islands. 47 deaths have been confirmed in 25 states and DC. Analyses of fluid samples collected from the lungs of patients identified vitamin E acetate, an additive in some products. Three of these reported deaths were Massachusetts residents.

Recent CDC laboratory test results of lung fluid samples from 29 patients submitted to CDC from 10 states found vitamin E acetate in all of the samples. These findings provide direct evidence of vitamin E acetate at the primary site of injury within the lungs. THC was identified in 82% of the samples and nicotine was identified in 62% of the samples.

CDC recommends that people should not use THC-containing e-cigarette, or vaping, products, particularly from informal sources like friends, or family, or in-person or online dealers. While this investigation is ongoing, vitamin E acetate should not be added to e-cigarette, or vaping, products.

In addition, people should not add any substance to e-cigarette or vaping products that are not intended by the manufacturer, including products purchased through retail establishments. CDC will continue to update guidance, as appropriate, as new data become available from this outbreak investigation.

On September 11, 2019, these cases were declared reportable to the Massachusetts Department of Public Health (MDPH). The Massachusetts case definition is: “a person experiencing otherwise unexplained progressive symptoms of shortness of breath, fatigue, chest pain, cough, and weight loss, of any severity, and an abnormal chest imaging study, associated with vaping in the past 90 days.” MDPH has received dozens of reports of suspected cases, including cases in young people. Healthcare providers are required to report any suspected cases to MDPH.

He then highlighted BPHC Vaping response efforts, which include Governor’s Emergency Order enforcement support, inspected all 800+ Boston tobacco retailers to ensure compliance, nearly all stores were found to be in compliance on initial visit, clinical advisory to Boston providers regarding vaping-related illness, included case definition and reporting requirements as well as cessation supports including work to expand the pool of cessation counselors to meet increased need. BPHC is scheduling the three-day “Basic Skills for Working with Smokers.” These are available to BPHC programs and any Boston community partners that directly work with clients experiencing tobacco dependence.

Ms. Harding then gave a summary of relevant data, which included:

Boston has enjoyed a long-term downward trend in overall nicotine and tobacco use.

After Board’s flavoring restrictions were implemented, Boston public high school current vaping rate decreased from 14.5% in 2015 to 5.7% in 2017. In comparison, the 2017 statewide rate in Massachusetts was 20.1%.

Most recent national data showed that youth vaping rates have continued to increase; now over 27% of youth report current vaping. Over 80% of youth initiate tobacco use with a flavored product.

Menthol tobacco products disproportionately impact youth and people of color. Nationally over 50% of youth smokers use menthol products, far higher than the adult rate. 93% of Black smokers started with menthol cigarettes.

Youth vaping rates are related to sexual orientation. 16% of BPS high school students identifying as LGB reported current vaping, compared to 5% of students identifying as heterosexual (2017 YRBS).

FDA's Tobacco Products Scientific Advisory Committee concluded that menthol cigarettes pose a threat to public health above and beyond that posed by regular cigarettes and that removal of menthol cigarettes from the marketplace would benefit public health in the United States.

TPSAC Tobacco companies add flavors to their products to mask the harsh taste of tobacco, making it easier for young people to start smoking. That's why Congress banned the sale of flavored cigarettes in 2009. But Congress made one exception to the flavor ban, deferring action on the most popular of all flavors — menthol — and directing the U.S. Food and Drug Administration to decide whether continued sale of menthol cigarettes is “appropriate for public health.”

While a complex web of factors that could contribute to these apparent dramatic reductions between 2015 and 2017, it seems likely that they are related in part to Boston's flavor and purchase age amendments.

To ensure that the FDA was advised about menthol and other scientific issues, the Tobacco Control Act established the Tobacco Products Scientific Advisory Committee (TPSAC), which included leading scientific experts, and mandated that the Committee study menthol in cigarettes. After a careful review of the evidence, the Committee issued its report in March 2011, concluding: “Removal of menthol cigarettes from the marketplace would benefit public health in the United States.”

Regarding the Boston Youth Tobacco Smoking Trends slide, Ms. Hardin noted local data showing Boston Public High School students reporting smoking cigarettes in the last 30 days. 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 policy changes throughout this period that we believe helped to drive these dramatic reductions, shown here.

Shows that we are heading in the right direction with strong regulations. We think this argues in favor of strengthening regulations.

The red asterisk here shows what we are concerned about. The combined nicotine and tobacco use rates in 2017 is at 9.9%, which is essentially were we were a decade ago. This is attributable to the increase in youth vaping.

National Tobacco and Nicotine Trend slide included that among high school students, current e-cigarette use increased from 1.5% in 2011 to 20.8% in 2018, which reverses a decline observed after 2015. The result is increasing overall combined tobacco and nicotine product use rates.

As Tobacco Control experts celebrate gains in reducing youth cigarette use, we are confronted with the rapid expansion of the use of e-cigarettes. This chart shows the youth vaping trend nationally. The dotted line shows an increase in the current e-cigarette use from 1.5% in 2011 to 20.8% in 2018. 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.

Public Hearing Overview slide included: Public hearing and comment period was published in Globe and online, outreach made via direct mail to all Boston tobacco retailers, Hearing was held on November 7th at 5pm. 56 people offered oral testimony. 25 testified in opposition and 31 testified in support. Themes echoed written comment and a full transcript provided to the Board for review.

Public Comment Overview: Public Comment period ran from September 18th to November 8th. 210 total written comments received. 118 total comments in opposition. 30 comments submitted through the Board office. 88 were auto-generated emails sent to other offices and forwarded to Board office. 92 total comments in support; includes several letters submitted on behalf of coalitions, including 74 chapters of The 84 Movement, 34 Tobacco Free Mass member organizations, 22 Massachusetts League of Community Health Centers, 30 Fight All Flavors Campaign member organizations, which include: African American Tobacco Control Leadership Council, Allston-Brighton Substance Abuse Task Force, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, BAGLY, Bethel AME, Boston Collegiate Charter School, Boston Ten Point Coalition. BOLD Teens, Campaign for Tobacco-Free Kids, Central MA Tobacco-Free Community Partnership, Codman Square Neighborhood Development Corporation, EASTIE Coalition, Health Resources in Action, Lawrence Methuen Community Coalition, Massachusetts Association of Health Boards, Massachusetts Prevention Alliance, Men of Color Task Force, Metro Boston Tobacco-Free Community Partnership, Northeast MA Tobacco-Free Community Partnership, Parents Against Vaping E-Cigs (PAVE), Project RIGHT, PUSH-UP Youth at John D. O'Bryant High School, Revere CARES, Roxbury Tenants of Harvard Association, Sociedad Latina, The 84 Movement, Tobacco Free Kids Action Fund, Tobacco Free MA.

Chairperson Lopes asked for more information about auto-generated comments. Mr. McCann noted that all came in through Council President Campbell's office and we agreed to enter them into the record. They were generated by a web platform mylegislators.com, which allows for lists of email addresses to be entered to generate public comments. This is a fairly common practice in regulatory advocacy, but we wanted to flag that we are including them in the record even though these 88 comments were improperly submitted.

Slide: Public Comment – Organizations Represented in Opposition: Boston Convenience Store Owners Association, New England Convenience Store & Energy Marketers Association, Law Firm Fletcher and Tilton.

Slide: Public Comment Opposition Summary:

Focused on menthol tobacco rather than menthol vaping products, seeking an exemption for cigarettes, cigars, and smokeless tobacco. Ms. Harding noted that we appreciate this concern, however, because tobacco use remains the leading cause of death in America, as public health we have a duty to take steps to protect the next generation from tobacco addiction through comprehensive local regulations. While public attention is focused on vaping, addiction to traditional tobacco products continues to kill over 450,000 Americans each year.

The second concern argued that retailers take the responsibility of age compliance seriously, highlighted FDA inspection compliance rates.

Ms. Harding noted that while we appreciate that the great majority of retailers in Boston take their legal responsibility not to sell tobacco and nicotine products to children seriously.

In addition to the FDA compliance checks, the Boston Public Health Commission's Tobacco Control Program conducts regular compliance checks and takes enforcement actions to hold retailers accountable. The program closely monitors compliance data to ensure that adequate protections are in place. In 2018, our compliance checks involving attempted sales to minors found a 18% violation rate. This may be due in part to the fact because our regulations cover up to 21, we tend to use older individuals for our compliance checks. This data was presented to the Board of Health prior to its decision to move forward with a comment period for these amendments.

The third point was that quote "proposed bans would severely limit the choices of our adult customers when purchasing a legal product"

Ms. Harding noted that the proposed amendments do not ban the sale of menthol products in Boston; rather, they restrict their sale to verified adult-only retail locations. Beginning in 2015, when the Board adopted restrictions on all flavors other than menthol, an exemption was established for adult-only retail stores. This was done primarily to reduce litigation risk, though it also has the effect of allowing adults who specifically prefer these flavors to have somewhere within Boston to purchase them.

Opposition comments also included the argument that prohibition for adults doesn't work when there is a patchwork of local laws.

Ms. Harding noted that in the past, tobacco control regulations adopted by Boston have ultimately been adopted by the Commonwealth and, in some cases, at the federal level. Therefore, we think that the issue of a "patchwork" will be a temporary.

Another concern was "it could shift sales of these products from law-abiding retailers, like us, to potentially illegal sources who don't check IDs."

We share your concern about illegal sources, particularly as the director of the program that enforces tobacco laws in Boston. Those sales would be in violation of a number of existing laws, and would welcome the cooperation of the business community in identifying any potential instances of illegal sale or distribution.

In the long run, a regulated market that allows for limited, appropriate settings for adult access will both reduce youth access and reduce pressures for individuals to participate in the black market.

With respect to the economic impact arguments presented, Ms. Harding noted that we disagree about the net effects on the community. Tobacco addiction is devastating to individuals and families, and the economic dimensions of these impacts are great.

We recognize that regulations can have economic impacts for regulated entities, and we and the members of the Board do not take those potential effects lightly.

That said, the actual economic impacts on tobacco retailers in Boston will not be as significant as anticipated. First, the profit margins, especially on traditional tobacco products, are relatively low compared to other products due to wholesale prices and considerable taxes. The economic impacts will fall more squarely on tobacco manufacturers.

As you can see from the long-term trend, public health regulations are working to reduce overall tobacco consumption. This remains our long-term goal.

Ms. Harding then presented a series of slides listing organizations in support, including Mayor Martin J. Walsh, the African American Leadership Council, BOLD Teens, Tobacco Free Kids, Mass Assoc of Health Boards, the National African American Tobacco Prevention Network, the 84 Chapters, Tobacco Free Mass, and a full list is included in the presentation and record.

Slide: Public Comment Arguments in Support:

- Reducing menthol tobacco use remains an important public health priority that would have significant impacts on persistent health inequities.
- Over 80% of youth report starting tobacco use with a flavored product.
- Over 50% of youth who smoke cigarettes report smoking menthol.
- Menthol is preventing further reductions in tobacco smoking.
- As other vaping flavors are restricted, youth switch to mint, menthol, and wintergreen.
- The retail environment is key to reducing youth access. 74% of youth reported that they access nicotine products through retail stores and 52% through social sources, compared with 6% online.
- Reducing nicotine addiction and tobacco would generate economic benefits that outweigh negative economic impacts to industry and retail stakeholders.
- “For a lot of older generations, it wasn’t their fault - we as a society didn’t know how terrible smoking was for your health. But now we do.”

Slide: Menthol Cigarettes Remain Popular Among Youth

Ms. Harding noted that while smoking is at an all time low, the youth that are smoking are largely smoking menthol cigarettes. 54% of current smokers from 12-17 prefer menthol cigarettes.

Slide: Youth Switch to Mint and Menthol

Ms. Harding noted that this chart shows what flavors are most popular among high school e-cigarette users. As flavored e-cigarettes are being removed from the retail space through state and local regulations, you see a decline in the use of these flavors and an increase in the popularity of mint and menthol flavored e-cigarettes.

Looking at Juul specifically, in November, 2018 when Juul stopped selling mango, fruit medley, crème brule and cucumber flavored pods to brick-and-mortar stores, sales of its mint flavored pods have skyrocketed. Now mint flavored pods make up close to 75 percent of Juul's revenue.

Slide: Menthol Prevents Reductions in Smoking

Ms. Harding noted that menthol cigarettes are the one tobacco product whose use is increasing among youth. This is slowing the reductions in overall cigarette smoking rates. From 2004 to 2014, the decline in cigarette consumption was greater for nonmenthol cigarettes than menthol cigarettes. For adult smokers aged 18 and older, there were significant increases in menthol cigarette use from 2008 to 2014. Menthol smoking prevalence now exceeds non-menthol smoking prevalence among both youth and young adult smokers. Youth smokers remain the age group most likely to use menthol cigarettes.

Ms. Harding introduced PJ McCann, Deputy General Counsel who will share with you updates from the state level and next steps.

Mr. McCann noted: as I am sure you are all aware, last week the Senate voted to adopt An Act Modernizing Tobacco Control. This is an omnibus bill and we are not going to cover all aspects of the legislation, but want to focus on aspects related to the local retail sales environment and go through a crosswalk of the differences of what the legislature has passed and is awaiting the Governor's signature and what we have proposed. We will highlight places where we proposed aligning our proposed amendments with the legislation and places where we decided that it's not appropriate to do so.

Mr. McCann noted that the considerations that we made in making these recommendations were first, whether the proposal is consistent enough with what has been presented to the Board and put out for public comment because we are mindful of making sure that what the Board ultimately votes on is substantially similar to what the community engaged on. The second consideration is whether the provision is something that can be effectively implemented at the local level. For example, some provisions in the state legislation are related to taxation and cessation coverage; things that are more appropriate for state-level legislation or cannot be handled at the local level for legal reasons, such as the inability to tax locally. Given that, we are setting aside those issues that are not appropriate for local action. The third consideration is whether the amendment is likely to sustain legal challenge.

Our recommendations are informed by these considerations as well as the great amount of public comment that the Board received.

To outline some distinctions, the state legislation increased the fines for sales to a person under age 21 from \$100 to \$1,000 for a first offense and from \$200 to \$2,000 for a second offense. This is one thing that we have not included in the proposal before you. We have a comprehensive

penalty structure that includes fines and suspensions. We think that fines are the greater deterrent at the local level. Ultimately, if these fines are signed into law and implemented, we would have the ability to enforce them. In some of these places, we plan to let the state proceed and if provisions are signed into state law, local tobacco control program staff will be able to enforce them.

The second key provision bans selling, distributing or causing to be sold or distributed, offering for sale or marketing or advertising any flavored tobacco product or tobacco product flavor enhancer. We include this in our proposed language, with the exception of the provision regarding advertising.

Third, the state bill exempts only sales for on-site consumption on site smoking bars from the favor ban, which is a narrower exemption. The proposed Board amendment retains broader exception for adult only stores. State provision would be enforceable locally if it becomes law.

Fourth, the state bill prohibits the sale of any electronic nicotine delivery system with higher nicotine concentrations, which is an interesting approach to address how addictive these products are, however, we think this falls under the category of things that are best handled at the state level. Once state regulatory decisions about how it will be implemented are made, we can partner with the state in enforcing it. This provision exempts retail tobacco stores or smoking bars.

Lastly, with respect to implementation date, because of the Governor's order, flavored vaping products are already off the shelves, the state legislation calls for provisions related to those products to take effect immediately, rather than have them be reintroduced into the retail environment only to be removed shortly thereafter. To give the retailers time to sell down tobacco products, state law calls for a June 1st, 2020 implementation date. In order to align with state implantation and messaging efforts, we recommend aligning the regulation timeline with the state bill. Any questions here before we move forward?

Ms. Gutman asked if there are any places where the Boston regulation goes further than the state legislation? Mr. McCann said that a lot of the new state provisions are already on the books in Boston. Still, there are a lot of details in our regulation that are stronger, such as the ability to revoke permits, which is a deterrent for violations. Additionally, we heard from comments on both sides that increased ID checking requirements were necessary to prevent youth access, so our proposal to add in section three, subsection two, language that requires ID checking before any tobacco sale, regardless of the apparent age of the customer. We also retain the amendment requiring that all entrants into adult-only stores be carded immediately upon entry, at the door, to make sure that these establishments are truly adult-only. What we saw from the compliance data is that there really is a youth access problem across all retailer types. Rather than increasing the apparent age, we thought it was better to say that everyone needs to be carded. From an enforcement and compliance perspective, its easier to have a clear rule.

On the Recommendations slide, Mr. McCann said that we propose amending Section II(1) to create a new definition for "Adult-Only Retail Tobacco Store," clarifies adult-only distinction from the two remaining tobacconist establishments that allow smoking; it also prohibits the sale of products that attract youth to these 21-plus stores. An enforcement issue has been that the sale

of products other than tobacco has played a role in attracting young people to these stores. Also, enforcing the requirement that 90 percent of revenues come from tobacco and nicotine products has been a challenge. Rather than continue to enforce a specific threshold for incidental products, we suggest a clear rule establishing these stores as tobacco and nicotine only.

The “characterizing flavor” definition to include mint, menthol and wintergreen is in Section II(4).

As we noted, we suggest incorporating the definition of “tobacco product flavor enhancer” to align with the state legislation and address the potential expansion of after-market products to add flavor to tobacco products. We thought that this was in keeping with the initial proposal and made sense, so we propose including it.

Section III(5) is where the restriction on the sale of flavored tobacco products and flavor enhancers is set out, incorporating the new definition.

Section III(18) clarifies that a violation of state or federal law constitutes a violation of the regulation. We believe that we already have the authority to enforce state law but given the proposed changes at the state level and our likely role in enforcing, thought it made sense to clarify that we do indeed have the authority to enforce state law.

Section IV(1) clarifies that the exemption from cigar packaging and self-service display rules only apply to the limited number of business that are exempt by a grandfather provision from Workplace Smoking Regulations and not new adult-only retail tobacco stores as defined in the proposed amendments.

Section XIII establishes the implementation schedule as I described earlier. At this point I welcome any discussion by members of the Board and there is a vote in your packets for you to review.

Chairperson Lopes asked if there were any questions from the Board. Dr. Childs-Roshak noted that the proposals seemed very reasonable.

Chairperson Lopes said I’d like to thank the Commission staff for all the work you’ve done in this area, especially the legal team in cross walking the proposed amendments with the state legislation. Hearing no other discussion, Chairperson Lopes asked for a motion for a vote to approve. Mr. McCann suggested reading the motion language into the record.

Chairperson Lopes read:

Whereas, the Boston Public Health Commission (“Commission”) has proposed to amend sections of the Youth Access Regulation with the intent to protect the health and welfare of the citizens of Boston and said amendments are attached hereto;

Whereas, the Commission has submitted the proposed amendments to the Regulation to the public for comment and held a public hearing and any and all comments received were given due consideration; and

Therefore, the Board, for the purpose of reducing prevalence of tobacco and nicotine delivery product initiation and use, hereby adopts the proposed amendments after public hearing on November 7th, 2019 and review of written comment and staff recommendations. The Executive Director is hereby directed to take such actions as are necessary to implement and enforce the amendments to the Regulation in accordance with the terms and conditions set forth therein.

On November 25th, 2019, the Board voted on the foregoing resolution unanimously by roll call vote with all active Board members present. The amendment passes.

Leadership Transition

Chairperson Lopes said, next, we will discuss the leadership transition. As many of you know, our Executive Director Monica has informed us that she will step down at the end of the month after spending four years in this leadership role. This will allow Monica to spend more time with her family. At this time, I want to publicly thank Monica for her leadership over the past four years. The list of what she has accomplished here at the Commission is quite long, and as newly appointed Chair, I can only thank her for her leadership and support. I know many of us feel the same way. We have accomplished a lot and you should feel good about where the Commission stands today. These accomplishments include a three-year strategic plan, in partnership with the staff, an effort to attain full accreditation was accomplished, the redesign of the Neighborhood Trauma Teams, as well as the expansion of the NTT with community health centers and community-based partners. As well as her efforts in recovery services and community violence. I can't thank you enough for all the hard work that you've done.

Ms. Valdes Lupi said thank you.

Chairperson Lopes said on behalf of the Mayor and Chief Martinez, I want to thank you again for your leadership; we wish you all the best.

We will be transitioning and creating a search committee of the Board which will begin the search for a new Executive Director, and we will have further discussion about the search at future public meetings. In the interim, I'm happy to announce that Rita Nieves, who many of you know, will be appointed as Interim Executive Director. I would like to also thank Gerry Thomas who has accepted the role as Interim Deputy Director.

A motion was made by Mr. Fernandez and seconded by Ms. Walsh and was approved unanimously.

Hearing no further items, the meeting adjourned at 5:08pm.

Attest:

/S/ Susan Belvis
Board Secretary