

INTERNATIONAL FOOD CODE MEETING

MUNICIPAL COMPLEX
DATE: SEPTEMBER 25, 2017

PORTSMOUTH, NH
TIME: 3:00PM

Staff: Jane Ferrini, Assistant City Attorney; Kim McNamara, Health Officer; Kristin Shaw, Deputy Health Officer and Kelli L. Barnaby, City Clerk

Others: Paul Sorli, Portsmouth Gas Light, Co.; Bethany Hayes, TJ's Food & Spirits; John Golumb, Poco's; Mike Somers, NHLRA; Jack Blalock, Mayor & Old Ferry Landing; Matt Govoni, Breaking New Grounds; Thomas Perron, Mombo Restaurant; Lai Kuen Kwok, Kim Lai Chinese Restaurant; Roberta Cutting, CURE Restaurant; David Campbell Lozuawau-McComsey, Street; Massimo Morgia, Ristorante Massimo; Jim Splaine, Assistant Mayor; Sarah Bryan, Earth Eagle Brewings; Alex McDonald, Earth Eagle Brewing; Francesca Marconi, Geno's Chowder; Hugo Martin, Martingale & Rosa; Mark McNabb, Martingale & Rosa; Matt Louis, Moxy & Franklin Oyster House; Dagan Migirditch, Liars Bench Beer Co.; Victor, Navone; La Jas Navone; Ed Lilyeholm, Palace Entertainment and Attorney Flagg

Assistant City Attorney Ferrini called the informational meeting on food code operations to order at 3:00 p.m. She advised those in attendance that a sign-in sheet has been passed around for everyone to sign-in. She stated this meeting came about because of questions on the proposed food code ordinances. She indicated that the questions brought forward were relative to change of ownership, the appeal process and how that looks and where the inspections for the food code end and for the buildings where the fire codes begin.

Health Officer McNamara said change of ownership is a question where the controlling interest remain in the document.

Assistant City Attorney Ferrini asked if a percentage changes in controlling interest, will that be the definition. Health Officer McNamara said the only time we are going to know is if you tell the department.

Health Officer McNamara spoke to the on-line applications available now.

Matt Louis asked if the business is sold does he have to get his business up to code or is it the new owner. Health Officer McNamara said nothing needs to be done for the sale of the business.

Mark McNabb said his Restaurants are owned by LLC. He said there is confusion as long as the LLC remains the same and a new transfer of the controlling interest, would we need to notify the Health Department.

Campbell Lozuawau-McComsey asked if putting a business into a trust does it change or does the name remain the same.

John Golumb said he is a corporation that does not change the controlling interest which is less than 51%.

Health Officer McNamara said ownership interest will be deleted from Chapter 8. She said if someone wants to file an appeal it is through the Legal Department. The person and the Legal Department would have a meeting with the Deputy City Manager and Health Officer and try to resolve things. She said there are third parties which would be a resource that could have a third party opinion. She indicated if nothing changes the court becomes involved. She said an Administrative Hearing can be held at the request of the restaurant owner.

Assistant City Attorney Ferrini said there needs to be a type of notice given and there would be a certain amount of time to set the hearing. She stated a general survey of health codes and the process for appeals vary from place to place, and no two codes are the same. She indicated there are more formal requirements but they do not preclude from someone coming in to speak to Ms. McNamara.

Health Officer McNamara said things people are concerned with are filtration on the exterior and gas tanks, they're not food code items and those codes will be updated soon.

Mark McNabb expressed concern with the ordinance under food establishment. He said the facilities must be in compliance and has dealt with rules and regulations that prohibited him from operating because the food and kitchen below the sewer line. He said there are a whole host of other rules and regulations that come into play outside of the food code. He does not want to see anything in the food code that would deny a use because 95% of the downtown are not in compliance with recycling and if that was a requirement he would be shut down.

Health Officer McNamara said other items fit into the food code and are included into definitions. She said sublevel sewers are under the plan review process.

Mr. McNabb said it should say if there is a waiver process, the establishment should be allowed to operate.

Assistant City Attorney Ferrini asked if the plans are reviewed by Health and the Public Works Department. She indicated the process of plan review has changed, the plans and process of reviewing is more defined in years past.

Attorney Flagg said in the State HEP 2300 are the rules and regulations. He indicated RSA 147:1 requires that the City pass regulations. He said those regulations would need to be passed by the City Council and cannot be enforced but you will be told they are enforced.

Mark McNabb said he has an ordinance that states that a restaurant must comply with the City of Portsmouth code and rules and regulations. He said to pass something that is arbitrary leads many to believe things can change.

Health Officer McNamara said the definition of food establishment is all that refers to. She said it allows those licenses, food trucks and temporary events. She stated 201.1 is for temporary restaurants. She said the 2009 food code do comply here in the City. She stated that she does not agree with information that Attorney Flagg has said regarding rules and regulations.

Assistant City Attorney Ferrini said that guidelines are part of the process. She said we have authority to put forth the information contained in the ordinance proposed. Mr. McNabb said if the sewer is part of the rules and regulations that there needs to be a waiver. Health Officer McNamara said there is a waiver in the 2009 food code. Mike Somers said if there are other rules and regulations it would be great for the restaurants to have them or refer to them some way. Health Officer McNamara said they're available to anyone. Mike asked about the policies for new rules and regulations and what the process is. Assistant City Attorney Ferrini said the ordinance is one way to adopt something new. She said on the new website there is information for temporary set up for mobile vendors.

Assistant Mayor Splaine said we are talking about rules and regulations that are in conflict with other State law. He asked about decisions made by staff and what happens when responding out in the field. Health Officer said there is not a large umbrella of policies and procedures. She said with the new on-line process you get a great deal of knowledge. Assistant Mayor Splaine said he is concerned with the vetting process, when you create a rule, do you have a meeting like this, and do you go through a vetting process. Health Officer McNamara said they have requirements that allows for due process. She said if there is an unusual situation they would refer to national guidelines but they are not official regulations.

Health Officer McNamara spoke to working with people on their violations such as core items. She said core items do not make someone sick but priority items make people ill and you have 10 days to fix the issue. She said in the food code the core items allow for 90 days for fixing the issues.

Mr. McNabb said when there are substantive changes you need to have a vetting process. He said if there are local rules and regulations and they are substantive, you need to explain those changes. He indicated he would like to see a mechanism that is publicized that outlines a vetting process.

Thomas Perron asked who overviews the changes if someone takes over for Ms. McNamara.

Health Officer McNamara said by adopting the 2009 food code it would allow for more local requirements.

Thomas Perron said if rules and regulation are changed who is responsible for that. Assistant City Attorney Ferrini said that the 2009 food code is the one we will use. She said there are not a ton of rules and regulations. She said Ms. McNamara may have a one page document example such as dogs on decks.

Mr. McNabb said he understands Health Officer McNamara will provide guidelines but he wants to see those items separate from the food code. He said those items should be outlined separately and provided to the owners. He said these are things that are not part of the, food code but are part of restaurants check list. He said there needs to be list of polices and rules and a list of the processes. Assistant City Attorney Ferrini said she understands the points raised.

Paul Sorli said that he has to provide an enclosure for his outside bar area and he would provide information for the solution he has. Attorney Flagg said that the enclosed area is something that is not in the ordinance or adopted by the City Council. Health Officer McNamara said that is it outlined in the food code.

Campbell Lozuawau-McComsey asked when the code goes into effect. Health Officer McNamara said the 2009 food code has been in effect for years in the City.

With no further discussion and questions, Assistant City Attorney Ferrini adjourned the meeting at 4:17 p.m.

Respectfully submitted by:

Kelli L. Barnaby, MMC, CMC, CNHMC
City Clerk