Meeting date: July 11th, 2019     Location: Parr Widener Community Room #389

Time: Meeting was called to order at: 5:41p.m.
Meeting was adjourned at: 8:41p.m.

Board Secretary: Diana Altermatt

Attending: (check box)
☒ Jim Rada, Chair
☒ Celia Vanderloop, Vice Chair
☒ Patti Shwayder
☒ Catherine Cooney
☒ Genene Duran
☐ W. Lewis Koski Absent
☒ Chris J. Wiant

AGENDA ITEM | DIVISION | DESCRIPTION OF AGENDA ITEM | ACTION/ DECISIONS | RESPONSIBILITY/ DUE DATE
--- | --- | --- | --- | ---
Appeal of an Administrative Hearing Officer’s Recommended Decision | Public Health Investigations | 2018-FS-AC-0586 BPHE docket number 18-39 2018-FS-AC-0703 BPHE docket number 18-40 2018-FS-AC-0857 BPHE docket number 18-41 | Decision to uphold the Recommended Decision by the Administrative Hearing Officer was unanimous. Petitioner to pay fines in association with all three citations. | The Department will follow up with the petitioner Oksana Romanova, owner Garden Café’ LLC doing business as, Kseni Mademoiselle for payment of the $2,000.00 citation fees.

SUMMARY OF DISCUSSION
Jim Rada stated that the operator was given sufficient opportunity to prove that the products were not hazardous by having them tested and presenting those results to the Board. The petitioner failed to prove that the department had not made its case.
Genene Duran stated that the butter cream ingredient was tested, met department standards, and that the other products should have been tested as well.
Chris Wiant stated that the equipment was food service grade equipment which means it can keep the proper temperature. The operator of the facility was obligated to meet department regulations, regardless of an equipment or employee issue.
Mr. Wiant moved to uphold all three citations, Patti Shwayder seconded the motion. Vote was 7 in favor, 0 opposed.
<table>
<thead>
<tr>
<th>AGENDA ITEM</th>
<th>DIVISION</th>
<th>DESCRIPTION OF AGENDA ITEM</th>
<th>ACTION/ DECISIONS</th>
<th>RESPONSIBILITY/ DUE DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appeal of an Administrative Hearing Officer’s Recommended Decision</td>
<td>Tobacco Control Program</td>
<td>2018-TB-AC-0119 Board docket number 19-12</td>
<td>Decision to uphold the Recommended Decision by the Administrative Hearing Officer on procedural grounds.</td>
<td>The Board upheld the Administrative Hearing Officer’s decision to dismiss the Administrative Citation 2018-TB-AC-0119.</td>
</tr>
</tbody>
</table>

**SUMMARY OF DISCUSSION**

Mr. Wiant noted the confusion around the business name and legal name used in documentation used by inspectors but did not consider it a serious issue. Mr. Wiant also noted his approval of how the department managed the evidence involved in the case. Ms. Duran noted her concern with the notice to comply being sent twice to the wrong address. Ms. Duran also noted that the Rules state that the citation must by hand delivered, not mailed. Patti Shwayder noted that the tobacco program is a young program that continues to improve but that the Board should uphold the hearing officer’s ruling given that there were so many mis-steps. Celia Vanderloop stated that the evidence showed that the sale occurred but thinks that the department did not follow their own guidelines. Cathy Cooney noted the delay from when the infraction occurred to when the citation was provided. In the future Ms. Cooney suggested that the department provide citations in a timelier manner. Ms. Vanderloop motioned to move into an executive session to discuss what constitutes legal notice for administrative citations. Ms. Duran seconded the motion. Vote for the executive session was 7 to 0. Once the executive session was completed, Mr. Wiant moved to uphold the conclusion of the administrative hearing officer’s decision on procedural grounds because proper notice was not given by the department to the petitioner. Ms. Shwayder seconded the motion, the vote was 7 in favor 0 opposed.

<table>
<thead>
<tr>
<th>AGENDA ITEM</th>
<th>DIVISION</th>
<th>DESCRIPTION OF AGENDA ITEM</th>
<th>ACTION/ DECISIONS</th>
<th>RESPONSIBILITY/ DUE DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tobacco Program Presentation</td>
<td>Community &amp; Behavioral Health Division</td>
<td>Natalee Salcedo, Tobacco Program Supervisor Department of Public Health &amp; Environment Community &amp; Behavioral Health Division</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**SUMMARY OF DISCUSSION**

The tobacco program presentation to the Board was given by Ms. Natalee Salcedo, Tobacco Program Supervisor, (for a summary of the information provided, please consult the power point presentation that was printed for the meeting) and was then followed by questions from the Board. Mr. Wiant asked Ms. Salcedo if there were other agencies that do tobacco compliance inspections within the City. Ms. Salcedo stated that the department does FDA tobacco compliance inspections on behalf of the FDA. Mr. Wiant asked about information sharing with the FDA and Ms. Salcedo explained that the FDA does not share data beyond what they post publicly on their website because of strict guidelines around information sharing. Ms. Cooney asked if police officers...
also complete compliance checks and Ms. Salcedo stated that they do but not as consistently as the department and that they primarily focus on alcohol. Ms. Vanderloop asked if the data presented in the power point included data from the FDA and Ms. Salcedo stated that the data was only from the Denver program. Ms. Salcedo then gave an update on the Tobacco 21 policy and the department’s management of ongoing stake holder engagement with the community. Once Tobacco 21 is in place the department will promote retailer public awareness and education, including sending retailers an educational toolkit. The licensing component is expected to phase-in over a 6 to 8 month estimated line frame. Enforcement will only begin after retailer education has taken place. Board members praised Ms. Salcedo and her colleagues for their work. Ms. Cooney asked about other jurisdictions pursuing similar policies and Ms. Salcedo listed several Colorado cities that are working on the same issue. Ms. Duran asked about a timeline for implementation and Ms. Salcido noted that stakeholder engagement is ongoing, that the ordinance has been drafted and will be presented to city council soon. Ms. Shwayder asked if the Board would have to adopt rules and regulations related to the ordinance; the answer is no according to Lindsay Carder with the City Attorney’s Office.