

MA Food Policy Council minutes

Friday, July 21, 2017, 9:30 AM – 12:30 PM

CMRPC's Union Hall, Worcester Union Train Station, Worcester 9:30 AM – 12:30 PM

In attendance:

Joanna Benoit, Western MA Food Processing Center
Jeff Cole, Federation of Massachusetts Farmers
Jared Freedman, Rep. Steve Kulik's Office
Senator Anne Gobi
Representative Hannah Kane
Commissioner John Lebeaux, MA Dept. of Ag Resources Commissioner
Lea Susan Ojamaa, Dept. of Public Health
Frank Martinez Nocito, Dept. of Transitional Assistance
Eric Stocker, Distribution
Danah Tench, Dept. of Environmental Protection
Samuel Wong, MA Health Officer's Association

Call to Order: Commissioner Lebeaux called the meeting to order at 9:46 AM.

Approval of minutes: Vivien Morris asked that the public comment section include that Liz Wills-O'Gilvie was in attendance and raised concerns that the MA FPC include equity in presentations and discussions moving forward. A motion to accept the minutes was made by Senator Anne Gobi, seconded by Representative Hannah Kane and passed unanimously.

Officers Reports:

Commissioner Lebeaux had members and attendees introduce themselves. He thanked CMRPC for the meeting space and then introduced Noah Baustin, MA Food Policy Council Intern.

***Program:** Deep dive into the Support regulatory policies and practices that allow farms and other food system businesses to thrive. The current focus is to develop circuit rider positions at state regulatory agencies, subject to appropriation, to provide food business guidance in a non-enforcement capacity in an effort to aid in compliance. Additionally, circuit riders will provide support and guidance to local regulatory agencies. The objective is to educate the FPC as well as ask for some action.*

Summary of work/findings from MA Local Food Action Plan working group (appropriate regulations, easy to adopt rules, standardization, education before regulation, licensing requirements, third party certification for farmers markets to provide standardization for local BOHs. Jeff Cole, Director, Federation of MA Farmers Markets

Synopsis of the Working Group on Farming & Public Health recommendations: appropriate regulations, easy to adopt rules, standardization, education before regulation, clear and coordinated licensing requirements, third party certification for farmers market vendors in order to help provide standardization for local BOHs.

The Group discussed and was aware of the question raised in the recent hearing around expanding our recommendation for adopting legislation that set forth administrative procedures for adopting, amending, or terminating BOH regulations related to farming similar to requirements of other municipal boards and to Title V procedures already in place to other BOH actions. Though valuable, the Group concluded that they did not have the charge, the time, nor the capacity to do so. The Group concluded that such sweeping reform would require the input and support of all aspects of public health, and would require support from the general public, and was an action best organized from a much wider perspective.

Relevant information from the MA Local Food Action Plan: The need for more education throughout all sectors of the food system figures prominently in the plan. Strengthened educational services and training, coupled with applied research and targeted technical assistance, should be key tools to advance the state of practice in all sectors of the Commonwealth's food system.

Regulations are a necessary part of the food system. They create clear expectations for producers, processors, and retailers while protecting workers, the public, and the environment.

Identified Concerns/Issues:

- Regulation outweighing their benefits, the ability of producers to comply, or ability of regulators to enforce them
- Regulations lack a basis in facts and science-based research.
- Inconsistent regulatory structure
- Insufficient funding at the State and local levels create barriers resulting in obsolete
- Regulations that do not adequately address emerging issues in the food system.

To address these issues, a number of recommendations cite the need for substantial reform in how regulations are developed and enforced, promotion of more uniformity across municipal boundaries, engagement with a broad group of stakeholders earlier in the regulatory process, and an emphasis on enabling compliance, rather than having punitive action against violations as the only remedy.

At the local level, the recommendations cite the need to support the capacity of regulators to appropriately address existing and emerging issues related to food. Regulations and their enforcement should, above all, foster the production of better and more food while managing risk responsibly, not impose new management practices that producers and processors are unable to implement if they are to remain viable.

Nearly every working group of the Food Plan noted confusion and disparate regulation and enforcement in the public health sector. These conditions impacted food producers' ability to meet Food Plan goals to: *Increase production & sales of MA grown produce/food, create jobs and economic activity, improve wages and skills of food system workers, protect the land and environment, maximize environmental benefits from local food production, ensure food safety, reduce hunger and food insecurity, and reduce food waste.*

It was helpful to learn from DPH that creating model variances is an opportunity to address specific situations. For example, at farmers markets, growers want to sample apples.

Ideally, there would be guidelines for BOHs on specific topics related to food and agriculture situations that conform to applicable state and federal regulations, as well as to provide a distinction between hobby and commercial farmers. Poultry is a good example of regulation promulgated for hobbyists being applied to commercial farms with poor results.

The guidebook for BOHs should be updated with a separate chapter on agricultural issues. For example: Pesticide application is regulated by MDAR. But at times, BOH's get involved when they don't have statutory authority.

Each local BOH develops their own regulations, which in many cases are not uniform and create confusion for farmers and vendors. Education, training and technical assistance need to be provided to all parties and key stakeholders. One idea is that non-agency partners conduct an assessment relating to needs.

A circuit rider position is an important recommendation for communication and technical assistance. It is recommended that the position(s) be funded by the Commonwealth, perhaps attached to a somewhat neutral agency.

Comments/questions:

Farmers are beginning to get third party certifications on every corner. If this happens, will there be overlap? Farmers don't need another set of certifications. Many of the certifications are in food processing and packaging, but not on the retail side. Working through MDAR's CQP program would be ideal.

An example of difficulties with farmers markets is a small Mediterranean food business that sells in many farmers markets around Boston but doesn't sell in Somerville because all staff at that farmers market must have Serve Safe training. In some markets wooden crates can be used and in other plastic crates are required. In some cases mechanical refrigerators are required. In other cases, product must be on a table, and in other markets, can be on a crate on the ground.

The process of promulgating a local public health regulation and potential changes to the process relative to local agricultural issues. Cheryl Sbarra, J.D., Sr. Staff Attorney, Director of Policy and Law, Massachusetts Association of Health Boards

Cheryl has been working with MA Farm Bureau and the FMFM for the past six years, including work on a model template for animal keeping which should be available soon, and will be based on an interested applicant coming before the BOH to demonstrate that they can comply with BMPs. Farmers Market regulations won't focus on numbers but instead will be more practice-based.

BOHs look to MGL relevant section 31 for legal authority to pass regulations, which stand on the same footing as other laws. BOHs can make reasonable regulations, which are consistently supported. Courts have lots of umbrage for local BOHs. Section 31 was amended so that if a city has an ag commission, it must be notified of upcoming regulations, which is meaningless since the timing is off. The new proposal HB 2465 (Kulik) wouldn't require a public hearing but before enacting regulations that impact farming or ag, the board must provide information to the ag commission which would have 45 days to review and could hold public hearings and provide written comments within that period.

Massachusetts General Laws Chapter 111, Section 31

“Health regulations; summary publication; hearings; impact on farming or agriculture; filing sanitary codes and related rules, etc.”

1. Boards of health may make **reasonable** health regulations.
2. **Summary** of the enacted regulation must be “published once in a newspaper of general circulation in the city or town.”
 - a. This “shall be **notice to all persons.**”
3. Violation can be a fine of no more than \$1000.00.
4. If city/town has Agricultural Commission the municipality shall, **during the publication period**, shall solicit and consider comments from the Commission on regulations that have an impact on farming or agriculture.
 - a. Added November 7, 2016.
 - b. Meaningless because there is no requirement to publish until **after** the regulation is enacted.
5. That’s it! Except for Title 5 regulations.
 - a. Subsurface disposal of sanitary sewage (septic and sewer).
6. Title 5 Requirements:
 - a. Must hold a public hearing.
 - i. Must provide notice of the public hearing, including:
 1. Time
 2. Place
 3. Subject matter, sufficient for identification
 - ii. Must publish this notice in a newspaper of general circulation in the city or town once in each of two successive weeks.
 - iii. First publication must not be less than fourteen days prior to the date set for the hearing.
 - iv. If no newspaper exists:
 1. Post notice in a conspicuous place in city or town hall
 2. For not less than 14 days prior to the date of the public hearing.
 - b. Hearing itself:
 - i. Board of Health must state the local conditions which exist or reasons for exceeding state minimum requirements.
7. **MAHB strongly suggests that Boards of Health hold hearings and follow notice requirements for ALL PROPOSED REGULATIONS.**
8. Proposed amendment to Chapter 111, Section 31:
 - a. In a city or town with a municipal Agricultural Commission, prior to enacting a regulation impacting farmers markets, farms, and the non-commercial keeping of poultry, livestock, and bees and the non-commercial production of fruit, vegetables and plants.
 - b. The board of health shall provide the Ag Commission with a copy of the proposed regulation.
 - c. The Ag commission has 45 days to review the proposed regulation.
 - i. During this time, the Ag Commission may hold a public meeting

- ii. Ag Commission may provide written comments and recommendations to the board of health.
- d. Ag commission may waive the 45-day review period.

Comments/Questions: Recognizing that there is a patchwork of resources and expertise that exist for local BOHs, it should be noted that to more equitably and effectively deliver public health, the towns are very different in terms of their budgets, for example. A town in western MA has a budget of \$600 and in some cases a part time or no health director or have only volunteers. BOHs are charged with enforcing everything. There is a patchwork of resources and competencies for BOH to follow mandated laws. It would be helpful to work for a way to deliver the same services regardless of resources, including farming issues.

What about variances? The Food Code (which is being updated) doesn't really address farmers markets. MA DPH suggested using the Food Code variance division and applying it to farmers markets which can demonstrate that they are protecting the public health, even if they aren't applying the letter of the law. Farmers markets need to know that they have the ability to use variances. Draft variance documents could be available. The circuit rider position is difficult to support when the budget is tight.

What are other states doing? It's like apples and oranges – since other states work with County Health Departments that have resources. It's important to look for models that benefit county structures without lessening authority of BOHS.

What about situations where the BOH doesn't have the information to make a decision and then just says no? Farmers don't have a good recourse and don't have the time. Municipalities work very slowly. Working proactively would be helpful with TA and a circuit rider position. Education is critical.

The Role of Local BOHs on Farms including food production and sale, keeping of farm animals, nuisance, solid waste disposal, and waste water disposal. Sam Wong, FPC member and Vice President, MA Health Officers Association.

BOHs are very resource challenged. For example, Massachusetts has more BOHs than CA and TX combined, so it's very difficult to have the resources to handle all the issues including all types of retail food sales including farmers markets. There are 351 ways to interpret the same regulations. As a member of the leadership team of the Health Officers Assn, TA is being provided re: farmers markets and ag issues to our members, as well as keeping of farm animals in residential areas. In some cases, there isn't a lot of space, and the residents may not have training on BMP. So residents may complain of nuisance issues. These complaints have to be addressed in many cases without technical assistance, so model information is very much appreciated. Solid waste and waste water including those on ag operations are in our purview. In recent years, there have been more nuisance complaints including composting issues that include vermin and birds. Local BOH may be asked about pesticide runoff into local water bodies, though MDAR is the group in charge. Assessing blue green algae is an issue and whether to close a beach, and if the source is farm runoff. The Association plans to focus on issues relating to farmers markets and using variances and interpretations.

Role of MA Department of Public Health re: local BOHs, state and federal regulations: Michael Moore, Director, Food Protection Program, MA Department of Public Health

Talking with different BOHs and even different individuals will generate different interpretations. The BOH is in many cases an elected or appointed board which could be over-ridden. In some municipalities individual health agents give variances. A local BOH has to enforce a lot of laws. Some 85% of the food inspectors also enforce other regulations including septic systems, West Nile virus and rabies. The focus of inspections can change with the economy, for example, when there is a building boom, there might be fewer restaurant inspections. The Retail Food Code is based on the FDA Retail Code, amended every four years. All Serve Safe training is based on the FDA retail food code. MA currently is based on the 1999 Food Code, which is being updated. MA is able to supplement the national document with local statutes, state codes, etc. The state has concurrent authority to enforce the Food Code. There are 300 food inspectors state-wide. The MA FPP gets 1,200 queries in a year by email. Efforts are underway to use an IT system to collect information so that there is consistency in answering questions.

Case Study: World Farmers, Maria Moreira

We are noticing a decline in the number of customers at farmers markets. For growers, it's hard to understand the rationale behind so much regulation. Growers don't have a problem with food safety or regulation, but rather the inconsistency. Farmers are not able to pass along the extra cost and have a sense of urgency because of the short growing season. It would be helpful to have a clear guide for growers for value-added products to be able to better work with local BOHs. Greens in a bag are a product that some BOHs might require be bagged in a commercial kitchen. We need clear rules for minimally processed products, and to be sensitive to the cultures our new farmers represent so they can understand what's needed. Sampling has a direct effort on sales, but has become very complicated based on working with local BOHS.

Comments/questions: What are some examples? A Hmong veggie wrap sold well at the Brookline farmers market in the past, but now the grower is being advised that a food safety manager's certificate is required. One farmer who sells to four markets is dealing with four sets of regulations. The confusion over regulations is huge since all 351 BOHs can have their own interpretation. Standardization is critical. A circuit rider would be an important asset, as well as a certification program for standardized approval. The Special Commission on Local and Regional Health recommended that small BOHs consider consolidating to share resources.

Circuit rider position, recommendations for FPC and future topics: Winton Pitcoff, MA Local Food Systems Collaborative

This issue ran through the entire plan, so the Collaborative made it a priority through a facilitated discussion. The report is on the website, mafoodsystem.org, in the report section. There was broad agreement that the issues are not a result of malice but a lack of resources for training and technical assistance. Health agents have no required training and a huge amount of authority and agriculture is actually a small part of it. There isn't uniformity among farmers and their production either. The agents aren't saying no because they think it's unsafe or due to a code but because they don't have a reference point and needs to respond creatively. On the farmer side, it's hard to push back since it looks like there's a lack of support for food safety. Farmers in Massachusetts want something clear and consistent to know their food is safe. The circuit rider position was difficult to promote since it costs money. Brad Mitchell, Farm Bureau, and Cheryl Sbarra have done a tremendous job of dealing with issues on a case by case basis. They are acting in a sort of circuit rider position already, so it may not be clear of how pressing the need is. We can't rely on this ad hoc way of addressing this. How do we systematize this with better processes in place? Circuit position would save BOH staff time and resources to avoid

punitive action. Educate before regulate. In the plan, one recommendation is to set priorities that the plan can use around interagency practices. Relating to state and federal issues, the Council has an opportunity to demonstrate the collection action around specific recommendations and advocate for change. Outside resources such as UMASS Extension could be considered.

Comments/questions: Could a grant fund a position for the circuit rider? Perhaps a SARE grant? It would be competitive but an advantage is that there could be many state agencies in support. It could be a request to the Governor's office which might take time and research, but it could be very meaningful for sustainability, economic growth and efficiencies for local BOHs. Could existing membership associations be a vehicle for TA and funding? Where could the position be located? There should be good access for both growers and BOHs. Would UMASS be a consideration? Could a state agency share the position? Perception is important, but if the position is at DPH, it could be difficult to deal with pressure from a higher level.

Discussion on the MA FPC moving forward, facilitated by Winton Pitcoff: It's been 1.5 years since the plan has been accepted – it's a good time to decide how to run with something. How can the Collaborative be helpful? Everyone has been enthusiastic after this year's meetings, how can we capture this and move forward? It might be helpful to see a summary of where we are on the six issues and what the next action step is. Perhaps the public could dive in. The Council could vote on certain legislative topics. The FPC has a minority of state agencies as members by design.

What does it mean for the Council to actually take action? Commissioner is interested in Climate Change. Secretary Beaton has a dedicated staff member on this topic. Can the FPC be networked a bit more with regional FPCs? Metrics also come up a lot – benchmarks and progress made on each goal. Given the makeup of the Council another idea is a core set of metrics. The Council could inventory state programs that relate to the food system.

At a previous FPC meeting, FPC models across the country were described. It might be worth revisiting.

The value in updating outside groups should not be underestimated. It's important for the FPC to be cognitive of the legislative and budget cycle and work early on what an ask might be. There could be a budgetary and legislative piece. The challenges related to BOH's go beyond agriculture – there is a lot of overlay.

Progress of the MA Food System Collaborative: A Food Waste Briefing at the state house will review 12 pieces of legislation, identifying recommendations for the best elements. The state budget looks strong to support the MA food system with Funding for Food Trust, Buy Locals, and the Healthy Incentives Food Program with \$1.3 M in the budget. At the Brockton farmers market, there were more SNAP sales in one day than the previous two years combined. At the Copley farmers markets, there was a long line of HIP customers. There is strong evidence that the HIP program is working very well.

An example was given of a local BOH with a dedicated staff person and who also used contractors, however it was difficult to operate in a crisis situation. So working with a larger municipality as an agent was helpful. In another example, a town with no services opted not to join a bigger system because it would cost more.

Old Business: White Paper Food Waste. Commissioner Lebeaux thanked DPH for making edits to the Paper for the topics relating to their agency. As per recommendations from the last meeting, as chair, he accepted the changes and the White Paper is finished, and will be posted to MDAR's FPC page and it available for the MA Food System Collaborative page or other situations where it might be useful. He shared copies of the paper with edits from DPH, as well as the final version.

New Business

Announcements

Next meeting of the MA Food Policy Council: September, 15, 2017 9:30 AM – 12:30 PM – Tower Hill Botanical Garden

Public Comment

Adjournment

The meeting was adjourned at 12:38 with a motion by Senator Gobi, seconded by Representative Kane and passed unanimously.