



City of Dover Board of Health

Orientation and Overview

December 14, 2021

Public Health in New Hampshire

- Public health is primarily, but not exclusively, within the state's domain.
- Local government—officers and local boards—can only exercise those powers delegated to them by the statute through a statute.
 - Preemption
- The New Hampshire Department of Health and Human Services (“DHHS”) is the primary state agency responsible for public health.
 - DHHS has promulgated administrative rules on communicable diseases (Chapter He-P 300), sanitary production/distribution of food (Chapter He-P 2300)
- Other state agencies address certain public sanitary issues or licensing, for example:
 - Department of Environmental Services: Sewers, Hazardous Waste
 - NH Liquor Commission (various licenses)

Local Boards of Health

- In Dover, the City Council has partially delegated its role to the local Board of Health.
- In Dover, the Board of Health can recommend policy to the City Council. See RSA 147:1; Dover Code § 9-2.
- Assist with education

Local Boards of Health Cont'd

- Reporting: “Local boards of health shall report immediately to the department those cases or suspect cases of reportable diseases of which they have knowledge.” *N.H. Code of Admin. Rules*, He-P 301.03(e).
- In Dover, the Board of Health has other, specific reporting/administrative obligations:
 - Shall promptly at the close of each fiscal year (June 30th) issue a written report to the City Manager “ giving a classification of all complaints made to it, together with such suggestions pertaining to the health of the City as it may deem expedient to present; so much of the vital statistics as is necessary; the cause of death, so far as possible; and such other sanitary information as may be called for by the City Manager”. *See Dover Code § 9-2(C)(4)*.
 - Shall prescribe a blank form for the Health Officer to record inspections. *See Dover Code § 9-2(C)(5)*.

Health Officers

- Enforce public health laws and rules and make sanitary investigations;
 - (DHHS is lead agency with authority to issue quarantines; RSA 141-C:13)
- Investigate dwelling conditions, RSA 48-A:8, I
- Investigate nuisances and other dangers to public health, RSA 147:3.
- Report communicable diseases (as listed in RSA 141-C:8) to DHHS Commissioner, RSA 141-C:7.
- Assist DHHS when requested with establishment and enforcement of isolation and quarantine, RSA 141-C:5.
- Order buildings vacated if there is a “clear and imminent danger to the life or health of occupants or other persons.” RSA 147:16-a; *see also* RSA 147:17 (relating to rented premises).
- Issue orders for correction of faulty private sewer systems. RSA 147:17-a.
- Initiate local regulations subject to other approvals. RSA 147:1.

Health Officers Cont'd

- In Dover, the Health Officer may:
 - Examine food or drink “for the detection of unwholesomeness or adulteration”. *See Dover Code § 85-4.*
 - Inspect restaurants at least once every six months. *See Dover Code § 85-5.*
 - Inspect food and beverage vendors at least quarterly. *See Dover Code § 109-5.*
 - Receive reports of contagious disease. *See Dover Code § 89-8.*

*Not Exhaustive

Procedural Considerations

- Pursuant to Dover Code 9-2, the Health Officer is the Chair and Secretary
 - Chair typically calls meetings, determines agendas, and presides at meetings.
 - Secretary typically keeps minutes of the meetings and records.
- Board membership per Dover Code: Five regular members and one alternate:
 - Two of the following: a physician, dentist, physician assistant, or nurse practitioner who live or practice in the City of Dover;
 - Two citizens of the City of Dover, one regular and one alternate;
 - An ex officio City Councilor;
 - The Health Officer.
- Should consider adopting procedural rules.
 - Address meeting procedures
 - Address meeting frequency
 - Daytime meetings
 - Pursuant to Laws 2021, Ch. 61, the board now must meet at least once annually.
 - Establish procedures for interacting and coordinating with Health Officer, Emergency Management Director (Chief Haas, per Dover Code 5-10), City Council, and State Agencies.
 - Establish enforcement procedures:
 - Suspending restaurant licenses and conducting licensee hearings. *See* Dover Code § 85-2.
 - Causing removal of a “vault or drain” that has “become offensive or obstructed.” *See* Dover Code § 89-5.
 - Receiving reports of contagious diseases and take necessary action. *See* Dover Code § 89-8.
 - Receive petitions for abatement of nuisances. *See* Dover Code § 89-9.

COVID-19

- No State of Emergency declared right now
- Local boards of health often involved in making recommendations concerning local face covering mandates
 - Dover City Council reviewed and table a face covering mandate in 2020
- Could help with increasing vaccination rates through education and outreach
 - HB 220 passed in 2021 prohibits compelling immunization as a condition of public services or benefits.

Right to Know

Two Big Takeaways:

1. Formal requirements for meetings of public bodies;
2. Public review of municipal documents

Right to Know, cont'd

Meetings

- Statutory meeting requirements triggered by a quorum
- Open to public
- Minutes kept;
 - If a confidential meeting, must be sealed by motion or else become public
- No deliberations outside of requirements
 - Email deliberations also prohibited!
- Sensitive to raising/divulging confidential or privilege information during public sessions

Right to Know, cont'd

- Not a “meeting”
 - Consultation with legal counsel (counsel must be present)
 - Collective bargaining strategy
- A nonpublic meeting (non-exhaustive list)
 - Personnel actions (hiring, discipline, etc.)
 - Reputational harm
 - Considering pending claims or legal advice
 - Considering sale or lease of property
 - School board’s consideration of a tuition contract

Remote Participation in Meetings

- If quorum is physically present:
 - Each remote participant must state
 - (i) why attendance in person is not “reasonably practical”; and
 - (ii) who is present at their location (be mindful if meeting has a non-public or confidential aspect);
 - The meeting must at all times be audible to the remote participant and to the public attending;
 - All votes taken must be by roll call vote.
 - Minutes must reflect the reasons given by each remote participant for attending remotely.

Remote Participation, cont'd

- If quorum is not physically present:
 - All requirements on prior slide apply, but there must also be an “emergency” declared by the chairperson;
 - By statute, “an ‘emergency’ means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action.” RSA 91-A:2, III(b).
 - Minutes must reflect the chairperson’s determination of an “emergency” as well as the facts upon which the determination is based.

Right to Know, cont'd

Documents for Inspection

- Public records
- Documents reviewed by public body
- Email or other correspondence
 - Preference for use of City email
- Social media possibly
- Not exhaustive
- Exceptions & exemptions
 - Narrowly construed
 - Personnel matters
 - Legal advice
 - Other Confidential documents

Right to Know, cont'd

Resources:

- City Attorney's Office
 - We will help you each collect and respond, including identification of anything confidential or exempt
- Attorney General's memorandum (update in progress)
- Other publications ,including NHMA publications

Right to Know, cont'd

Other Compliance Considerations:

- Oath of office
- Penalties
 - Invalidation of public action
 - Costs
 - Attorney's fees
 - Civil penalties
 - Remedial training

Ethics Issues

Various sources of authority:

- Dover Charter 10-2 (conflicts of interest)
- Dover Code Chapter 22
- NH RSA chapter 95
- RSA 673:13 (disqualification for local land use boards)
- RSA 669:7 (incompatibility of dual office)

Ethics, Cont'd

- Conflicts of interest principles:
 - Personal interest must be pecuniary and “immediate, definite, and capable of demonstration; not remote, uncertain, contingent and speculative.” *Atherton v. Concord*, 109 N.H. 164 (1968);
 - “The area of matters on which aldermen and other legislators must pass is of such a wide range that almost every legislator, whether he be in a private or public calling, or in neither, must inevitably have some interest which may conceivably be affected by some legislative proposal. It follows that, if every possibility of conflict, no matter how remote, uncertain, contingent, insubstantial or speculative, were cause for disqualification, many persons who are peculiarly suited for public office by the very reason of their commercial or professional experience would be prevented from contributing their services to the community.”

Ethics, Cont'd

- Conflict provisions apply to decisions involving “family,” meaning “spouse, parent, grandparent, child, grandchild or sibling” as well as “all persons who are members of the same household” whether or not a blood relative (Dover Code 22-1)
- Timing: Ideally abstain prior to discussion taking place
- Distinction between legislative and quasi-judicial capacities
 - Rules more strict when acting in quasi-judicial setting;
 - “An act is judicial in nature if officials are bound to notify and hear the parties, and can only decide after weighing and considering such evidence and arguments as the parties chose to lay before them.” *Appeal of Keene*, 141 N.H. 797 (1997).

Ethics, Cont'd

- Gifts
 - \$25 per gift; \$100 total per calendar year per source;
 - Dinners
 - Favors
 - Services
- Confidentiality
 - Maintain confidential information and privileged information

Ethics, Cont'd

- Ethics Committee pursuant to City Charter to investigate and adjudicate ethics violations
- Your decision
- When in doubt, disclose
- Do not be intimidated: you have a duty to sit and vote just as much as you do to recuse yourself, so weigh them accordingly;
- Violation could invalidate board action;

Quasi Judicial Functions

- Judicial or quasi-judicial capacity (not legislative capacity):
 - Conducting hearings on licensees: “An act is judicial in nature if officials are bound to notify and hear the parties, and can only decide after weighing and considering such evidence and arguments as the parties chose to lay before them.” *Appeal of Keene*, 141 N.H. 797 (1997).
- Stricter standards of fairness & due process apply (e.g., N.H. Const. Pt I, Article 35)
- Juror standard
 - Indifferent
 - No prejudgment