



TOWN OF NORTHBRIDGE BOARD OF HEALTH

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The Northbridge Board of Health approved these minutes at a meeting held June 9, 2015.

MEETING MINUTES - May 27, 2015

This meeting was called to order at 6:05 PM by Mr. Paul McKeon, Chairman. Other members present were Mr. Scott Chase and Ms. Lani Criasia. Mr. Steve Garabedian and Mr. Chris Cella were absent. Also present was Jeanne M. Gniadek, Administrator, and Ms. Terry Gilchrist, Health Inspector.

Kyoto Restaurant: This special meeting of the Board was held due to a recent incident involving the manager of Kyoto Restaurant refusing entry to the Health Inspector for an inspection of this food establishment.

Present for this meeting were Thien Phan, Owner, Hai “Andy” Nguyen, Manager, and Attorney Brian Forts.

Mr. McKeon began by stating this incident would not have happened had your restaurant not received so many critical violations in its previous inspection report which resulted in the establishment being under a Quarterly inspection order. Mr. McKeon stated that the refusal of entry of Ms. Gilchrist he considers a very serious offense. He stated that the Board is charged with enforcement of minimum sanitation codes. He stated that the Board’s duty is to protect the public health. He asked that Ms. Gilchrist relate to the Board the incident and then he would provide an opportunity to Kyoto for rebuttal.

Ms. Gilchrist stated that she arrived at the facility around 10:35 AM (on May 16, 2015). She knocked on the door, Andy saw her, and shook his head “no”. She stated that she pulled out her clipboard and badge but he was walking away so she was not sure if she saw that, however, she did feel that Andy knew who she was. She stated that she walked to the rear of the facility and knocked on the door but no one answered. She went back to the front door and knocked, still no answer. She went back again to the rear door, noting that it was about 11:10 AM now. Since no one was answering, she called Chairman McKeon and left a voice mail. She then called the Worcester Kyoto location and was provided the cell phone # for Thien Phan. She called Thien to ask him why they would not let her in. She admitted that at this point she was angry. She stated that Thien informed her that he would be there, but that was not for another 20 minutes. When Thien arrived he unlocked the door to provide her entry. Ms. Gilchrist stated that when she was let in she called Andy over to ask him why he refused her entry. She stated that Andy told her that “I don’t have to let you in, we don’t open until 11:30”. She informed Andy that he does need to let her in – that she is an inspector and can come at all times that they are processing food. She stated that Andy then asked her to show her in the book where it says that he has to let her in. Ms. Gilchrist stated that she went out to her car to get the code book. She

placed it on the bar and proceeded to show Andy and Thien where the code requires that they provide access to the Board and its agents.

Ms. Gilchrist stated that she proceeded with her inspection and that Thien was hovering right over her shoulder as she was writing her report. She asked that he back away. She stated that it was at this point that Thien called her a racist which really upset her. She stated that she told Thien that this has nothing to do with race. She would like Thien to explain that comment.

At the end of the inspection, she stated to Thien that she wanted to review the inspection report with him. Thien stated that he had to leave and that Andy was in charge and that he would go over the report with her. So she asked Andy to review the report with her. Andy asked if they could move into the dining room away from the employees to review the report and Ms. Gilchrist stated that she replied, absolutely. Ms. Gilchrist stated that once again, Andy asked for her to show him in the book where it says that he has to let her in. She showed him again and then asked him to sign the inspection report. She stated that Andy refused to sign. She stated that she then informed Andy that she didn't care if he refused to sign the report, that he was still responsible for correcting any violations noted in the report. Ms. Gilchrist stated that at this point she left the facility.

Attorney Forts responded that his clients were concerned, from a safety standpoint, that his clients have three facilities and it is their general practice at all facilities to clean all floors prior to opening, noting that on a previous inspection the inspector (Ms. Gilchrist) had fallen on a wet floor, so they do not allow anyone in until the floors are dry. He stated that Andy was simply following their standard policy that they keep the doors locked and do not let anyone into the facility.

Mr. McKeon stated that they could have at least addressed the inspector to inform her that the floors were wet and to ask her to return in a half hour. Attorney Forts stated that he could appreciate that but that emotions accelerated on both sides and that there can be an occasional language barrier. He stated that this was an unfortunate case of Andy following the business's policy but that he should have informed the inspector, no question about it.

Attorney Forts stated that Kyoto has no violations at its other facilities (Holden and Worcester). Mr. McKeon stated that he did not want to hear about the other facilities. He stated that he is familiar with the way Worcester operates and that we do not operate that way. He noted that some towns are smarter than others.

Ms. Chase asked if this is a business policy, then you must have it in writing somewhere, he asked that the Board be provided with a copy of their policy/rules. Attorney Forts stated that this rule is oral, not written. Ms. Gilchrist asked if this became part of their policy after she had fallen over a year ago, then why has she been allowed in for inspections prior to 11:30 AM for 6 out of the 9 times that she has done inspections at this facility prior to them opening to the public?

Ms. Criasia asked Andy if he as manager was familiar with the food code and if he possessed the required food manager and allergen awareness certifications. It was noted by Ms. Gilchrist that he does possess the required certifications and that they are posted in the establishment. Ms. Gniadek also informed the Board that the certifications are on file in the Board of Health office.

Ms. Criasia asked Andy if he had ever seen Ms. Gilchrist before. He stated that he had. Ms. Criasia asked if this was a surprise inspection. Mr. McKeon stated that all inspections are surprise inspections, they are not scheduled. Ms. Criasia stated that many times the semi-annual inspections tend to fall on dates close to a six-month gap in between. Mr. McKeon added that they also tend to fall on Fridays and Saturdays due to the inspector's availability, but that all inspections are un-announced. Mr. McKeon stated that he does not expect this to ever happen again, however, if it does, then he would advise Ms. Gilchrist to seek a police escort for which the restaurant owner will pay for the police detail charges. Mr. McKeon stated that he hoped that it would never come to that. He stated that his friends eat at Kyoto's, his wife used to eat there, and we are suppose to be protecting their health. It is the duty of this Board to protect the public health. Mr. McKeon stated that Ms. Gilchrist has been the health inspector for this Board for nine years and that we have not had any issues with her performing her duties.

Mr. McKeon stated that had they informed Ms. Gilchrist that the floors were wet and to ask that she return later, then it would have been a perfectly legitimate excuse to deny entry, especially knowing now, which he was not aware of prior to this evening, that Ms. Gilchrist had fallen at this facility before. Mr. McKeon stated that they are fortunate that his cell phone was left in his office and that he did not get Ms. Gilchrist's message until the following Monday as he may have closed their doors due to denying access because he would not know if they were hiding something, that this is to him a serious critical violation.

Ms. Gilchrist stated that she has oftentimes come during food prep time, and NOT during food service, so that she would not be disruptive to the operation of the restaurant. She stated that she was shocked by what happened as she feels that previous to this incident they had a good working relationship. She asked Thien if he agreed but he did not respond.

Ms. Criasia stated that she feels like there is a pre-attitude towards Terry and asked if something happened. Thien stated that he was at Fruitti Frozen Yogurt (another establishment he owns in town) when he received Terry's call. He stated that he was at Kyoto's within five minutes. When he arrived he unlocked the door to let Terry in. Ms. Criasia asked why Andy, the designated person-in-charge at the food establishment did not let Terry in. She stated that we are the Health Department and that we are important for the people in our community, people outside the community that come into this establishment, and also to you, the food establishment. She stated that these reports are public record and that anyone can come into the Board of Health office to view your inspection report and that if they find an unacceptable report that person may decide that they do not want to eat at that facility due to critical violations found or because the facility refused entry to the Board of Health. Ms. Criasia stated that if there is an attitude it has got to stop.

Ms. Criasia again asked Andy why he did not let her in. Andy responded that he did not sign the inspection report because the report was not true. Ms. Criasia noted that he did not answer her question but wanted to know what in the report was not true. He stated that the mice droppings in the establishment was not true. Andy stated that they called the exterminator the next day and that the exterminator stated that they do not have mice. Ms. Gilchrist showed the Board pictures on her phone taken the day of the inspection that clearly show mice droppings in the establishment. These photos were date and time stamped in her phone. Mr. McKeon stated that we have had this issue with a number of restaurants and that they should consider changing pest control companies as some are better than others.

Ms. Criasia asked Andy what other parts of the inspection report are you in disagreement with? Attorney Forts stated that the report included a page from King Jade restaurant. It was noted that this was only a blank cover page for King Jade that had not even been filled out. Ms. Criasia asked once again what sections of the report he disagreed with that caused him to refuse to sign the report. Andy replied that he could not sign for another facility. Ms. Criasia stated that we need to move past that as that was only a cover page and she wanted to know which violations that Ms. Gilchrist wrote up in the Kyoto report did he disagree with, other than the mice droppings, that caused him to refuse to sign the report? Attorney Forts stated that there was no dispute on the other items in the inspection report. He stated that due to the tenuous situation of the parties, the yelling at each other when the inspection first began, that the miscommunication led to them not signing the report. Ms. Criasia informed Attorney Forts that Andy stated to the Board that he refused to sign because the report was not true, not because of any other reason.

Mr. McKeon stated that if this establishment continues to receive critical violations in their inspection reports, then the Board may consider increasing the frequency to eight (8) times per year. He stated that the Board does not want that to happen, that they only want to inspect twice a year and to not find any problems in this food establishment noting that if everyone did their job properly then we wouldn't have any problems.

Mr. Phan stated that he appreciates the help that Ms. Gilchrist provided him when he opened his establishment. He stated that his manager and Ms. Gilchrist were not communicating; they did not understand each other that day. He stated that her yelling at the manager was not right. He stated that his sushi chef only speaks a little bit of English and that he cannot read well. He stated that he appreciates Terry's inspections, and that he gets a better understanding of what violations need to be corrected and appreciates that Terry lets him correct violations during the inspection. Thien stated that he accompanied Terry during the inspection because she was not getting along with the manager, Andy. Thien stated that he was trying to calm Terry down.

Ms. Criasia asked if they understood that they need to let the inspector in to do her job. Attorney Forts stated that it all goes back to their policy of not letting anyone in when the floors are wet. Ms. Criasia asked if the floors were wet just as you walk in or in the back as well. Thien responded that the entire floor was wet.

Ms. Criasia asked why Thien did not stay to review the inspection report. Thien replied that Andy is the manager and it was his responsibility to review the report – he noted that he is owner, but he is not the manager, he is not the person-in-charge. Ms. Criasia stated that what upsets her the most is that Ms. Gilchrist was just ignored. She stated that what also upsets her is that she was called a racist. Ms. Criasia stated that as a woman and having a job where most people are not fond of the health inspector, it is upsetting to have that person called a racist.

Mr. Chase asked when the next inspection was. Ms. Gilchrist stated that they are due for a re-inspection. Mr. McKeon stated that he may accompany her at the re-inspection. Ms. Criasia is also considering attending the re-inspection. Ms. Criasia noted that the establishment had two (2) critical violations in the May 16th report; the first being the storage of charcoal briquettes inside shed holding food products, the other being raw foods found on top of cooked foods noting that raw foods need to be stored separately away from cooked food. Thien noted that the charcoal briquettes were moved right away.

Mr. Phan stated that he did not want any problems with the Town and that he has instructed his manager to allow Ms. Gilchrist in when she comes to do inspections. He stated that he has not had any issues with Ms. Gilchrist before.

Ms. Gniadek suggested to Ms. Gilchrist that should she ever be denied entry into a food establishment for the purpose of conducting an inspection in the future then she should clearly note that in her report and forward that information immediately to the Board of Health for follow-up.

There being no further business, motion to adjourn at 7:10 PM was made by Ms. Criasia and seconded by Mr. Chase – all in favor.

Attested by,

Jeanne M. Gniadek, Administrator

List of Documents utilized by Board of Health
Meeting Date: May 27, 2015

1) Kyoto Japanese Restaurant

- a. Letter to Kyoto – May 19, 2015 (Certified Mail #7012 1010 0001 6453 4814)
- b. Kyoto Restaurant – Food Establishment Inspection Report – May 16, 2015
- c. Email (May 18, 2015) Terry Gilchrist to Jeanne Gniadek
- d. Phone Message Log (May 18, 2015) Erin Phan to BOH Office
- e. Email (May 18, 2015) Sharon Susienka to Jeanne Gniadek
- f. Copy of Food Establishment Permit Renewal Application signed by Thien Phan
- g. Copy of Food Establishment Inspection Procedure Policy signed by Hai Nguyen (January 16, 2015)
- h. Copies of Cover Pages of Inspection Reports (2013 through 2015) noting dates and times that inspections were conducted at Kyoto Restaurant
- i. Merged Food Code – various sections noting requirement/agreement to allow access to food establishment by agents of the Board of Health
- j. Merged Food Code – various sections on Suspension and Revocation of Food Permits