

**CITY OF CAMBRIDGE  
PUBLIC HEALTH DEPARTMENT**

**In The Matter of the  
Shepard Restaurant & Bar**

**DECISION AND ORDER**

**Regarding Request of the Shepard Restaurant & Bar located at 1 Shepard Street,  
Cambridge, Massachusetts for Permission to Conduct Testing of Restaurant  
Exhaust System**

**DECISION**

I. Procedural Background

On November 30, 2017, a hearing was held before me, as the Commissioner of Public Health for the City of Cambridge<sup>1</sup> (the “Commissioner”) at the request of the Shepard Restaurant & Bar (the “Restaurant”) for permission to “[c]onduct solid fuel (wood and charcoal) testing of its redesigned exhaust system, and if the test results are favorable, to resume grill cooking with solid fuel” (the “November 30<sup>th</sup> Hearing”).

In a prior decision issued on June 19, 2017, I determined that the Restaurant’s use of solid fuel (wood and charcoal) as a cooking source caused a condition of nuisance which was injurious to the public health and I ordered the Restaurant to cease and desist from using solid fuel as a cooking source. See, June 19<sup>th</sup> Decision and Cease and Desist Order attached hereto as Exhibit “A” (the “Cease and Desist Order”). The Cease and Desist Order was based on a hearing that was held, concluded and closed on April 6, 2017. See, Transcript of November 30<sup>th</sup> Hearing (“Tr.” 13).

A Notice of Hearing for the November 30<sup>th</sup> Hearing was issued on November 9, 2017 (see Notice of Hearing attached hereto as Exhibit “B”). The Notice of Hearing stated that “[t]he purpose of the hearing is for the Commissioner to take testimony and evidence solely to enable him to determine whether the Shepard Restaurant’s proposal to conduct testing of its exhaust system can be accomplished without causing a condition of nuisance, noisome trade, injurious odor, and/or a condition causing sickness which may be injurious to the public health.”

At the November 30<sup>th</sup> Hearing, a presentation was made by the Restaurant through its legal counsel, Charles Le Ray. Rene Becker, Owner of the Restaurant (“Owner”) and Anthony Stratton, an air quality consultant who works for Montrose Air Quality Services, LLC in Newburyport, Massachusetts (the “Restaurant’s Consultant”) presented evidence and testimony

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<sup>1</sup> Pursuant to Chapter 147 of the Acts of 1996, the Commissioner serves as the Board of Public Health for the City of Cambridge and as such is vested with the authority under M.G.L. c. 111, § 122 to examine into activities including but not limited to nuisances which may be injurious to the public health.

on the Restaurant's behalf. (Tr. 18-35). Following the Restaurant's presentation, eight (8) members of the public testified in opposition to the Restaurant's proposal to test its exhaust system (Tr. 37-62) and one (1) member of the public testified in favor of the Restaurant's proposal to test the exhaust system (Tr. 63-65). Fourteen (14) letters of opposition to the Restaurant's proposal were submitted for the record. (Tr. Ex. 4-18). One (1) letter was submitted expressing no opinion in favor of or against the proposed testing. (Tr. Ex.19).

Sam Lipson, Director of Environmental Health for the City of Cambridge Public Health Department (the "Department"), presented testimony on behalf of the Department. (Tr. 67-74).

The Restaurant was given an opportunity to make a closing statement and did so. All witnesses were sworn and a stenographic transcript of the hearing was made. At the conclusion of the November 30<sup>th</sup> Hearing I took the matter under advisement.

## II. Jurisdiction and Statutory Framework

1. The statutory authority for boards of health to hold fact finding hearings on the issues presented in this matter and to make determinations based on evidence and testimony presented at such hearings is set forth in M.G.L. c. 111, §§ 122, 123 and 143 *et. seq.*
2. M.G.L. c. 111, § 122 provides in relevant part that a local board of health has authority to "[e]xamine into all nuisances, sources of filth and causes of sickness within its town..., which may, in its opinion, be injurious to the public health...."
3. M.G.L. c. 111, § 123 provides in relevant part that a local board of health is authorized to order a property owner to remove "[a]ny nuisance, source of filth or cause of sickness found thereon within twenty-four hours, or within such other time as it considers reasonable, after notice...." The statute further authorizes the imposition of fines.
4. M.G.L. c. 111 §143 provides in relevant part that local boards of health may prohibit the establishment in a city or town of trades or employment "[w]hich may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome or injurious odors" except in a location that may be assigned by the board of health after a public hearing.
5. Local boards of health have broad discretion in determining what constitutes a condition of nuisance, noisome trade, injurious odor, and/or a condition causing sickness which may be injurious to the public health. See, *American Friends Service Committee of Western Massachusetts v. Commissioner of Department of Environmental Protection, et. al.*, 30 Mass. App. Ct. 457 (1991) (in upholding the local board's determination that biological research conducted by a university posed no danger to the public, the Court stated "[w]hether a particular trade or occupation may be of harm to the public, and thus whether local boards of health may restrict or ban such activity rests in the sound discretion of the local board").
6. For a local board of health to make an adverse finding, "it is not necessary that the trade shall actually be a nuisance or offensive. It is enough that it 'may be attended by noisome and

injurious odors' and it is enough if the odors may be injurious to the estates of the inhabitants." *Board of Health of Wareham v. Marine By-Products Co.*, 329 Mass. 174 (1952).

7. In Massachusetts, "[a] nuisance is public when it interferes with the exercise of a public right by directly encroaching on public property or by causing a common injury." *Town of Westport v. Monsanto*, 2015 WL 1321466, United States District Court D. Massachusetts, Civil Action No. 14-12041 (2015), citing *Connerty v. Metro. Dist. Comm'n*, 398 Mass. 140 (1986), *abrogated on other grounds, Jean W. v. Commonwealth*, 414 Mass. 496 (1993).

### III. Findings of Fact

1. The Restaurant is a retail restaurant business that is currently owned and operated by Rene Becker. (Tr. p. 12).

2. On June 19, 2017, the Restaurant was ordered to immediately cease and desist from using solid fuel (wood and charcoal) as a cooking source at the Restaurant's current location at 1 Shepard Street in Cambridge. (See, Ex "A", p. 6).

3. By letter dated November 7, 2017, the Owner through legal counsel requested that I as Commissioner "[h]old a public hearing on whether to allow Shepard to conduct solid fuel (charcoal and wood) testing of its redesigned exhaust system and, if the test results are favorable, to resume grill cooking with solid fuel." More particularly the Owner indicated that the "[r]equested testing would last about four hours, and would be conducted during the early/mid-afternoon when there is sufficient daylight to measure the exhaust's opacity. The test fire would begin with charcoal, with wood logs added later. To approximate the restaurant's service conditions, the testing would include cooking of food with solid fuel." (Tr. Ex. 1).

4. Pursuant to a Notice of Hearing dated November 9, 2017 and at the commencement of the November 30<sup>th</sup> Hearing, the Restaurant was advised that I would take evidence and testimony on the subject of whether the Restaurant's proposal to conduct testing of its exhaust system could be accomplished without causing a condition of nuisance, noisome trade, injurious odor and/or causing sickness that may be injurious to public health. (Tr. 10-11). See also, Ex. "B".

5. At the November 30<sup>th</sup> Hearing, the Owner testified that if permitted to use solid fuel as a cooking source, he would implement new protocols including: testing the moisture level of logs; storing logs in a shed with a tarp; burning fewer logs each night; eliminating the use of wood in the wood fired oven; burning smaller fires; turning down the speed of the exhaust fan and using charcoal as the primary fuel for cooking while adding logs for flavor enhancing purposes. The Owner also testified that he would increase the speed of the make-up air to create a more efficient curtain to prevent the smoke from coming into the kitchen space. (Tr. 22-23).

6. The Restaurant's Consultant testified that if the Restaurant were permitted to conduct testing as requested, an employee of Montrose Air Quality Services, LLC would perform the test using EPA Method 9 and would make a visual determination of the opacity of the smoke at the Restaurant's smoke stack. He testified that the testing required the employee to stand with the sun at their back at a certain distance with a certain angle of sight to the stack exit and to estimate

any visible emissions that the tester might see in 15-second increments. The Restaurant's Consultant did not offer evidence or testimony on the question of whether the requested testing would cause a condition that would be injurious to the public health. (Tr. 34-35).

7. The Restaurant's Consultant testified that the proposed visual testing cannot be performed if the wind is blowing directly at or directly away from the tester and that the meteorological conditions must be very favorable to estimate the opacity of the smoke. (Tr. 34-35).

8. Keren Schlomy, a resident, testified that she represents several households who had testified at the June 19<sup>th</sup> hearing that they had been affected by smoke and odors emanating from the Restaurant. She stated that the factors that impacted these neighbors are related to the fact that the Restaurant is a one-story building surrounded by three to six-story buildings and that the smoke stack is very close to the nearest resident. She stated that that these factors make it inappropriate for a commercial establishment to burn wood in this particular location. She stated that the EPA Method 9 opacity testing is not an appropriate test for determining whether the smoke and odors would cause a nuisance to the neighbors. (Tr. 37-42).

9. Anne Watkins, a resident who resides at 8 Shepard Street, testified that since the Restaurant stopped cooking with solid fuel following the Cease and Desist Order she has been able to open her windows and has been relieved of the stress of worrying about her daughter's health. (Tr. 48-49). In a letter submitted to me on November 18, 2017, Ms. Watkins stated that, prior to the Restaurant ceasing the use of solid fuel, she had spent over \$12,000 on an air purification and conditioning system to protect her daughter who had health issues related to her lungs that were exacerbated by the smoke from the Restaurant and that her husband had experienced red, itchy eyes and skin rashes while using their balcony. (Tr. Ex. 7).

10. Rae Simpson, a resident who resides at 8 Shepard Street, testified that since the day after the issuance of the Cease and Desist order, the change in the air has dramatically improved. She stated her belief that the proposed four-hour test is meaningless in terms of understanding the impact on the neighbors because conditions change according to seasons, wind and other factors. (Tr. 49-52).

11. Pat Whalen, a resident who resides at 6 Shepard Street, testified that in her experience the impact of the smoke and fumes from the Restaurant is very dependent on the direction and strength of the wind and that therefore the proposed four-hour test is inadequate for determining the impact of smoke and fumes on the neighbors which can depend on the direction and strength of the wind. She stated that any test should include measurements at the properties of those neighbors who had been affected by smoke and fumes. (Tr. 52-53).

12. Kevin Lee, a resident who resides at 3 Shepard Street, testified that he lives only fifty feet from the Restaurant and that every configuration of the equipment tested by the Restaurant thus far has resulted in smoke and odors penetrating his home. He stated that the proposed testing is inadequate for determining whether the smoke and odors are a nuisance to the neighbors. He stated that the proposed testing will not demonstrate what the smell from the Restaurant's use of solid fuel is like inside his house. (Tr. 60).

13. Sam Lipson, Director of Environmental Affairs for the Department, testified that an opacity test is not intended to predict the extent of residential impact or health effects of the smoke and odors. He stated that the opacity test is just a snapshot in time, does not account for meteorological conditions, shifting winds and other variables and therefore would not be an accurate predictor of the extent of impact on the health of the residents if the Restaurant resumed use of solid fuel (wood and charcoal) for cooking at the Restaurant. He also testified that a risk assessment should include vulnerable people such as children. (Tr. 69-73).

#### IV. Conclusions

Based on the evidence and testimony presented at the November 30<sup>th</sup> Hearing and in accordance with the factual findings set forth herein, I reach the following conclusions:

1. The Restaurant did not present credible evidence or testimony demonstrating that using solid fuel (wood and charcoal) as a cooking source in accordance with new protocols proposed to be used by the Restaurant while performing the proposed testing of the opacity of the smoke at the smoke stack could be accomplished without causing a condition of nuisance which would be injurious to the public health. (Tr. 18-28).

2. The Restaurant did not present credible evidence or testimony demonstrating that testing the opacity of the smoke at the smoke stack by estimating visible emissions that are seen in fifteen (15) second increments at the smoke stack under certain specific meteorological criteria would be indicative of whether using wood and charcoal as a cooking source in accordance with new protocols proposed to be used by the Restaurant during the testing would not cause a condition of nuisance which is injurious to public health. (Tr. 34-35).

3. The Department presented credible testimony that the proposed testing of the opacity of the smoke at the smoke stack would not account for meteorological conditions, shifting winds and other variables and therefore would not be an accurate predictor of the extent of impact on the health of the residents if the Restaurant resumed use of solid fuel (wood and charcoal) for cooking at the Restaurant.

4. The neighbors who reside closest to the Restaurant presented credible evidence and testimony that subsequent to the issuance of the Cease and Desist Order and the Restaurant's cessation of the use of solid fuel (wood and charcoal) for cooking they have not experienced the health problems that they had experienced during the two year period that the Restaurant was using solid fuel (wood and charcoal) for cooking. One neighbor testified that the air has dramatically improved since the issuance of the Cease and Desist Order. Another neighbor testified that prior to the Cease and Desist Order, every configuration of the equipment tested by the Restaurant thus far had resulted in smoke and odor penetrating his home. (Tr. 60).

5. The neighbors who reside closest to the Restaurant who had been affected by smoke and odors emanating from the Restaurant prior to the issuance of the Cease and Desist Order


presented credible evidence and testimony leading me to conclude that the health of individuals who are more sensitized to smoke and odors such as small children and people with certain health conditions may experience adverse health impacts from the Restaurant's use of wood and charcoal as a cooking source during the four (4) hours of testing proposed by the Restaurant. Tr. 45, 49, Ex. 5, 7, 8).

6. The Restaurant did not demonstrate that the proposed testing of the opacity of the smoke at the smoke stack while using wood and charcoal as a cooking source during the testing in accordance with new protocols proposed to be used by the Restaurant would not cause a condition of nuisance that would be injurious to the public health.

7. The Restaurant failed to demonstrate that the proposal to conduct testing of the Restaurant's exhaust system can be accomplished without causing a condition of nuisance, noisome trade, injurious odor, and/or a condition causing sickness which may be injurious to the public health.

### **ORDER**

Now therefore, based on the foregoing findings and conclusions, I hereby determine that allowing the testing proposed by the Restaurant could create a condition of nuisance, noisome trade, injurious odor, and/or a condition causing sickness which may be injurious to the public health. I am therefore denying the request of the Shepard Restaurant & Bar to conduct the requested testing.

  
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Patrick Wardell  
Commissioner of Public Health

Dated: January 12, 2018

EXHIBIT "A"  
CITY OF CAMBRIDGE  
PUBLIC HEALTH DEPARTMENT

**In The Matter of the  
Shepard Restaurant & Bar**

**DECISION AND ORDER**

**Regarding Use of Solid Fuel (Wood and Charcoal) as a Cooking Source at Shepard  
Restaurant & Bar located at 1 Shepard Street, Cambridge, Massachusetts**

**DECISION**

I. Procedural Background

On April 6, 2017, a hearing was held before me as Commissioner of Public Health for the City of Cambridge (the "Commissioner")<sup>1</sup> on the issue of whether smoke and/or odors alleged to be emanating from the use of wood and charcoal as a cooking source at a restaurant known as the "Shepard Restaurant & Bar" located at 1 Shepard Street in Cambridge, Massachusetts (the "Restaurant") caused a condition of nuisance, noisome trade, injurious odor, and/or a condition causing sickness which may be injurious to the public health as set forth in M.G.L. c. 111, §§ 122, 123 and 143 *et. seq.*

At the hearing, a presentation was made by Sam Lipson, Director of Environmental Health for the Cambridge Public Health Department (the "Department"), regarding numerous complaints from neighbors of the Restaurant that were made to the Department over a two year period about the adverse effects of smoke and odors allegedly emanating from the Restaurant. Mr. Lipson called witnesses to testify and presented evidence. The Restaurant, through its legal counsel, made a presentation responding to the allegations against it, called witnesses to testify and presented evidence. The Department and the Restaurant were each given equal time to present their evidence and to respond to the evidence presented by the other side. Neither side requested additional time. All witnesses were sworn and a stenographic transcript of the hearing was made. At the conclusion of the hearing the matter was taken under advisement.

II. Jurisdiction and Statutory Framework

1. The statutory authority for boards of health to hold fact finding hearings on the issues presented in this matter and to make determinations based on evidence and testimony presented at such hearings is set forth in M.G.L. c. 111, §§ 122, 123 and 143 *et. seq.*

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<sup>1</sup> Pursuant to Chapter 147 of the Acts of 1996, the Commissioner has the authority to act as the Board of Public Health for the City of Cambridge and as such is vested with the authority under M.G.L. c. 111, § 122 to examine into activities including but not limited to nuisances which may be injurious to the public health.

2. M.G.L. c. 111, § 122 provides in relevant part that local boards of health have authority to “[e]xamine into all nuisances, sources of filth and causes of sickness within its town..., which may, in its opinion, be injurious to the public health....”

3. M.G.L. c. 111, § 123 provides in relevant part that local boards of health are authorized to order a property owner to remove “[a]ny nuisance, source of filth or cause of sickness found thereon within twenty-four hours, or within such other time as it considers reasonable, after notice....” The statute further authorizes the imposition of fines.

4. M.G.L. c. 111 §143 provides in relevant part that local boards of health may prohibit the establishment in a city or town of trades or employment “[w]hich may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome or injurious odors” except in a location that may be assigned by the board of health after a public hearing.

5. Local boards of health have broad discretion in determining what constitutes a condition of nuisance, noisome trade, injurious odor, and/or a condition causing sickness which may be injurious to the public health. See, *American Friends Service Committee of Western Massachusetts v. Commissioner of Department of Environmental Protection, et. al.*, 30 Mass. App. Ct. 457 (1991) (in upholding the local board’s determination that biological research conducted by a university posed no danger to the public, the Court opined “[w]hether a particular trade or occupation may be of harm to the public, and thus whether local boards of health may restrict or ban such activity rests in the sound discretion of the local board”).

6. “[I]t is not necessary that the trade shall actually be a nuisance or offensive. It is enough that it ‘may be attended by noisome and injurious odors’ and it is enough if the odors may be injurious to the estates of the inhabitants.” *Board of Health of Wareham v. Marine By-Products Co.*, 329 Mass. 174 (1952).

7. In Massachusetts, “[a] nuisance is public when it interferes with the exercise of a public right by directly encroaching on public property or by causing a common injury.” *Town of Westport v. Monsanto*, 2015 WL 1321466, United States District Court D. Massachusetts, Civil Action No. 14-12041 (2015), citing *Connerty v. Metro. Dist. Comm’n*, 398 Mass. 140 (1986), *abrogated on other grounds, Jean W. v. Commonwealth*, 414 Mass. 496 (1993).

### III. Findings of Fact

1. The Restaurant is a retail restaurant business that has been in operation since on or about June 15, 2015. See, Transcript of April 6, 2017 hearing (“Tr.”) Exhibit (“Ex.”) 14. Susan Regis and Renee Becker own and operate the Restaurant (“Owners”). *Id.*

2. The Restaurant is one of several restaurants that has been located at 1 Shepard Street. The Restaurant was immediately preceded by a restaurant known as Chez Henri. (Tr. 26).

3. The Restaurant uses solid fuel (wood and charcoal) to cook approximately fifty percent (50%) of the food that it serves and uses gas burners and traditional cooking methods for the



remaining fifty percent (50%) of its cooking. The Restaurant operates both a wood fired oven and a grill on which wood or charcoal is used. It employs two cooks to operate its wood cookery in addition to two cooks who cook with gas. (Tr. 66-67).

4. The Restaurant's usual hours of operation are from 5:30 PM to 10:00 PM on week-nights and from 5:30 PM to 11:00 PM on week-ends. A wood fire is usually lit each day between 4:45 PM and 5:00 PM and is stoked until approximately 9:00 PM on week-nights and until 9:30 PM or 10:00 PM on week-ends. On one or two days per week, cooking with wood begins in the early afternoon to prepare food that requires a slower cooking process. (Tr. 68-69).

5. On many days throughout June and July, 2015, smoke resulting from the Restaurant's burning wood settled and collected on neighbors' property. Two neighbors who reside in separate units at 3 Shepard Street directly next door to the Restaurant, a neighbor who resides at 6 Shepard Street directly across the street from the Restaurant and two neighbors who reside in separate units at 8 Shepard Street, several houses away from the Restaurant, testified that smoke from the Restaurant entered into their residences through open windows, other openings, and, in one instance, through the air conditioning system. (Tr. 28, 32, 39, 40, 43, 46-47).

6. One neighbor testified that she resides directly opposite the roof of the Restaurant with only about thirty (30) feet separating her windows from the Restaurant's exhaust stack. She stated that she has lived in the same location for twenty-two (22) years and was not previously impacted by smoke from prior restaurants that had operated at the same location. (Tr. 29, 32-33).

7. One neighbor testified that she resides across the street and two buildings away from the Restaurant. She stated that she cannot open her windows when the Restaurant is open because of the severity of the smoke that enters her home through her open windows.

8. One neighbor testified that there was "a lot of smoke on the ground hovering in the driveway..." that "would actually leak into the house even with all the windows closed." (Tr. 39)

9. Neighbors who had lived in the neighborhood prior to the Restaurant's opening testified that they did not have any such issues with smoke emanating from Chez Henri, the restaurant that was previously located at the same location. (Tr. 27, 39, 47, 58).

10. One neighbor presented evidence that her asthma has worsened in the two years that the Restaurant has been operating. (Tr. 52-53; Ex. 3). Another neighbor testified that visitors with asthma no longer visited him because of the poor air quality within his residence. One neighbor testified that her family is unable to use their outdoor balcony as a result of smoke blowing onto it. She further testified that her husband has developed rashes and suffered eye irritation while on their balcony in the smoke and that he has experienced other symptoms caused by the smoke emitted from the Restaurant. (Tr. 22, 49, 61; Ex. 2). Neighbors testified that smoke and smoke odors continue to enter into their homes with the odors lingering on their furniture and other possessions. (Tr. 53, 60).

11. Testimony from multiple neighbors also demonstrated that to prevent smoke from entering into their homes, neighbors have had to keep windows closed. Those without air

conditioning cannot take advantage of cross ventilation in hot weather to cool their residences, and those with traditional air conditioning cannot use it because air conditioning draws in air, and thus smoke, from the outside. One resident whose child has a respiratory condition testified that her family spent almost \$10,000 on an air conditioning system that does not draw in outside air to protect the child from the smoke emanating from the Restaurant. (Tr. 32, 46 -48, 50, 53, 61).

12. The Owners first responded to complaints from neighbors that began shortly after the restaurant opened by reducing the amount of wood used. In July, 2015 the Owners reconfigured and combined the Restaurant's exhaust stacks. In September, 2015 they relocated the exhaust stack twenty feet closer to Massachusetts Avenue (and away from the neighbors) and increased the height of the exhaust stack. In November, 2015 they shifted from burning red oak to burning white oak. (Tr. 68, 79-81, 85-86, 93, 94, Ex. 14).

13. Following many months of complaints to the Owners and to City officials from at least six (6) residential neighbors, the Owners worked with City officials to find a solution that would reduce the impacts of the smoke on the neighbors while still allowing the restaurant to continue to cook with wood. After meeting with City Officials, the Owners purchased an exhaust scrubber (SmokiUSA) at a cost of approximately \$65,000. The exhaust scrubber was installed on or about June 8, 2016. In October 2016 they switched to burning charcoal in the Restaurant's grill while continuing to burn wood in its oven. In February, 2017, they reduced the height of the exhaust stack in an effort to lessen noise caused by stack vibrations. (Tr. 84-86, 121, Ex. 14).

14. Notwithstanding these efforts by the Restaurant, smoke from the Restaurant's exhaust stack has continued to blow onto neighboring properties and into neighboring residences including after the installation of the exhaust scrubber in June 2016. One neighbor testified that after the exhaust scrubber was installed the visible amount of smoke was diminished but there was no other improvement. (Tr. 60). Another neighbor testified that she continues to experience health problems (asthma) which she and her doctor have attributed to her exposure to wood smoke. Another neighbor testified that in July 2016 after the exhaust scrubber had been installed, there was a day when she was "smoked out" of her house and had to leave her home until the Restaurant closed for the night. (Tr. 32, 33, 53 Ex. 3).

15. The Owners acknowledge that the exhaust scrubber that they installed in June 2016 has not performed as they had expected. The Owners subsequently hired an air quality consulting firm to test the exhaust scrubber's performance. (Tr. 93, 94). The testing showed that the exhaust scrubber was not effective when a large amount of wood was burned and when a smaller amount of wood or charcoal was used, the exhaust scrubber only performed at about fifty percent (50%) efficiency which was lower than what the manufacturer had represented. (Tr. 94).

16. The Owners have discussed with their consultant what changes could be made to the equipment that might improve the equipment's performance while keeping in mind their limited budget. A few changes were recommended that could improve the equipment's efficiency. (Tr. 96).

17. Evidence and testimony were presented that smoke emitted from the Restaurant's exhaust stack gets trapped and does not adequately disperse. The Restaurant is in a single story building on Shepard Street, one storefront away from the intersection of Shepard Street and Massachusetts Avenue. To its south directly across Shepard Street is a six story building. Other neighboring structures are also multistory. Prevailing winds blow down Massachusetts Avenue from the north. This unique set of factors may cause smoke from the Restaurant to get trapped. (Tr. 19, 20, 120).

#### IV. Conclusions

Based on the evidence and testimony presented at the April 6, 2017 hearing and in accordance with my factual findings set forth herein, I reach the following conclusions:

1. The Department presented credible evidence and testimony that strong smoke and odors are emitted from the Restaurant's exhaust stack due to the Restaurant's use of solid fuel (wood and charcoal) as a cooking source. I conclude that based on the evidence and testimony presented, the Restaurant's use of solid fuel as a cooking source has caused a condition of nuisance which is injurious to the public health.
2. The Department presented credible evidence and testimony that the location of the Restaurant, the physical topography of the surrounding neighborhood and certain environmental factors have contributed to smoke and odors entering into the neighbors' residences through open windows, other openings and standard air conditioning systems as well as to smoke and odors lingering in outdoor areas including the neighbors' driveways and porches. I conclude that based on the evidence and testimony presented, the location of the restaurant and nearby residences and the topography of the neighborhood have contributed to smoke and odors that emanate from the Restaurant's exhaust stack that caused a condition of nuisance which is injurious to the public health.
3. Several neighbors presented credible evidence and testimony of specific ways that the smoke and odors that emanate from the Restaurant's exhaust stack have caused or have exacerbated their health problems including asthma, skin rashes and eye irritation. I find credible one neighbor's testimony that her family spent almost \$10,000 on an air conditioning system that does not draw in outside air in order to protect her child who suffers from a respiratory condition from the smoke emanating from the Restaurant's exhaust stack. I conclude that based on the evidence and testimony presented by neighbors who have suffered from specific health problems that the smoke and odors emanating from the Restaurant's exhaust stack have caused a condition of nuisance which is injurious to the public health.
4. The Owners presented credible evidence and testimony that they have taken a number of measures intended to mitigate the impacts caused by smoke and odors emanating from the Restaurant's exhaust stack and that they have incurred significant cost in doing so. I conclude that they have made operational changes including reducing the amount of wood used for cooking and using different types of wood in an effort to reduce the smoke and odors. They have reconfigured and relocated the Restaurant's exhaust stack more than once and they installed an exhaust scrubber that they believed would resolve the impacts of the smoke and

odors on the neighbors. I find credible the Owners' testimony and evidence that the exhaust scrubber did not perform as well as they had expected it would.


5. Notwithstanding the efforts made by the Owners to mitigate the impacts of smoke and odors on the neighbors, smoke and odors from the Restaurant continue to enter into the neighbors' homes causing or exacerbating the health problems of several neighbors as described above. I conclude that the conditions described by the neighbors did not abate after the exhaust scrubber was installed in June 2016. I conclude that based on the evidence and testimony presented, smoke and odors that have continued to emanate from the Restaurant's smoke stack after the installation of the exhaust scrubber continue to cause a condition of nuisance which is injurious to the public health.

6. The Owners did not present sufficient evidence that adequate mitigation of the smoke and odors is available within the Owners' budgetary constraints or that neighbors would not continue to be exposed to smoke and odors while any such potential mitigation measures were tested. I conclude that continuing to burn wood and charcoal while testing potential mitigation measures would cause a condition of nuisance which would be injurious to the public health.

7. I conclude that the Restaurant's use of solid fuel (wood and charcoal) as a cooking source at the Restaurant's location has caused a condition of nuisance, noisome trade, injurious odor, and is a condition causing sickness which is injurious to the public health within the meaning of M.G.L. c. 111, §§ 122, 123 and 143.

#### **ORDER**

Now therefore, based on the foregoing findings and conclusions, I hereby Order the Shepard Restaurant & Bar, its agents, employees and contractors to immediately cease and desist from using solid fuel (wood and charcoal) as a cooking source at the Restaurant at its current location at 1 Shepard Street in Cambridge, Massachusetts.

  
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Patrick Wardell  
Commissioner of Public Health

Dated: June 19, 2017



Cambridge  
Public Health  
Department

EXHIBIT "B"

November 9, 2017

## NOTICE OF HEARING

### REGARDING REQUEST OF SHEPARD RESTAURANT & BAR FOR PERMISSION TO CONDUCT TESTING OF RESTAURANT EXHAUST SYSTEM

**Shepard Restaurant & Bar, 1 Shepard Street, Cambridge, MA**

Please take note that on November 30, 2017 at 4:00 PM, a hearing will be held in the Second Floor Conference Room at the Cambridge Health Alliance's Windsor Street Care Center located at 119 Windsor Street, in Cambridge. The Center is accessible to persons with disabilities and the conference room is accessible by elevator located in the main lobby.

The hearing will be held pursuant to M.G.L. c. 111, §§ 122, 123 and 143 *et. seq.* The hearing will be conducted by Patrick Wardell, Commissioner of Public Health for the City of Cambridge. A stenographer will be present and will record the proceedings.

The hearing is being held at the request of Shepard Restaurant & Bar, located at 1 Shepard Street in Cambridge ("Shepard Restaurant"). Shepard Restaurant has requested permission to "[c]onduct solid fuel (wood and charcoal) testing of its redesigned exhaust system, and if the test results are favorable, to resume grill cooking with solid fuel." Shepard Restaurant's letter to Commissioner Wardell of November 7, 2017 may be viewed at the Cambridge Public Health Department's website.

The purpose of the hearing is for the Commissioner to take testimony and evidence solely to enable him to determine whether the Shepard Restaurant's proposal to conduct testing of its exhaust system can be accomplished without causing a condition of nuisance, noisome trade, injurious odor, and/or a condition causing sickness which may be injurious to the public health. Shepard Restaurant will be permitted to present its evidence to the Commissioner and the Cambridge Public Health Department will have the opportunity to respond.

Neighbors and abutters and interested persons who wish to present testimony and/or evidence in favor of or opposition to the Shepard Restaurant's request to conduct testing of its exhaust system will have the opportunity to speak at the hearing and may also submit written testimony. The Commissioner will establish at the hearing time limits for testimony to insure that all who wish to be heard will have an opportunity to do so.

Written testimony may be submitted in advance of the November 30, 2017 hearing by sending any such submissions to the attention of Patrick R. Wardell, Commissioner of Public Health for the City of Cambridge, c/o The Cambridge Health Alliance at 1493 Cambridge Street, 7th Floor, Cambridge, MA 02139. Electronic correspondences can be emailed to [tpeters@challiance.org](mailto:tpeters@challiance.org). Written statements will also be accepted at the hearing.

Please note that the parking lot at the Center is reserved for patients with clinical appointments.

*This announcement was updated on November 27, 2017.*

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