



Programs & Services Committee Report

City of Newton In City Council

Wednesday, February 6, 2019

Present: Councilors Rice (Chair), Brousal-Glaser (Vice Chair), Baker, Albright, Greenberg, Kalis, Krintzman and Schwartz

City Staff Present: Ali Giuliani (City Solicitor), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

#56-19 Reappointment of Amy Sangiolo to the Urban Tree Commission

HER HONOR THE MAYOR reappointing AMY SANGIOLO, 389 Central Street, Auburndale, as a member of the URBAN TREE COMMISSION for a term to expire December 31, 2020. (60 days: 4/5/19)

Action: Programs & Services Approved 8-0

Note: The Committee voted to approve the reappointment of Amy Sangiolo to the Urban Tree Commission, without discussion, unanimously.

#57-19 Reappointment of Julia Malakie to the Urban Tree Commission

HER HONOR THE MAYOR reappointing JULIA MALAKIE, 50 Murray Road, West Newton, as a member of the URBAN TREE COMMISSION for a term to expire February 5, 2020. (60 days: 4/5/19)

Action: Programs & Services Approved 8-0

Note: The Committee voted to approve the reappointment of Julia Malakie to the Urban Tree Commission, without discussion, unanimously.

#58-19 Reappointment of Elizabeth Wilkinson to the Urban Tree Commission

HER HONOR THE MAYOR reappointing ELIZABETH WILKINSON, 14 Trowbridge Street, Newton Centre, as a member of the URBAN TREE COMMISSION for a term to expire May 1, 2020. (60 days: 4/5/19)

Action: Programs & Services Approved 8-0

Note: The Committee voted to approve the reappointment of Elizabeth Wilkinson to the Urban Tree Commission, without discussion, unanimously.

Charter Subcommittee Report to Committee

Councilor Baker, Chair of the Charter Subcommittee of the Programs & Services Committee reported that the subcommittee was prepared to make recommendations based on their review of the Charter Commission's proposed amendments to the City's Charter. Redlined and clean versions of the subcommittee recommendations, as compared to the current Charter, were provided to the Councilors at the February 4th City Council meeting. Also provided were the current charter as well as the redlined Charter Commission recommendations. Those documents may be found at:

<http://www.newtonma.gov/civicax/filebank/blobdload.aspx?t=43665.21&BlobID=95349> and

<http://www.newtonma.gov/civicax/filebank/blobdload.aspx?t=43837.59&BlobID=95350>

Additional Amendments

Councilor Baker provided further minor, clarifying amendments to the submitted document related to voter turnout for citizen sponsored initiatives and referenda, as well as edits to the transition provisions. They are incorporated into the documents linked above. The transitions provision amendments were reviewed with the City Clerk and with the Law Department and irrelevant provisions were deleted.

The voter participation amendment in Article 10 requires 20 percent participation in an election for an initiative or referendum question to be passed. Councilor Baker was concerned with having any kind of minimum requirement, however, in speaking with the City Clerk, he learned that virtually every election in the last several years has had at least 20 percent voter turnout. It was unclear in the language, however, that the 20 percent voter participation pertained to the overall election and not to the question itself. The modified language makes that clearer. Language was also changed to reflect the number of voters used in the 20 percent calculation to be from the current election and not the previous election. Referring to the previous election provides a known number of voters ahead of time, which is why the Charter Commission recommended that language. This change was the at the recommendation of the City Clerk because determining the number of voters at the time of the election is a simple process.

Proposed Amendments

Councilor Baker provided an overview of some the proposed recommendation from the Subcommittee.

- Some changes were made to vacancies in the Mayor's office, School Committee and City Council provisions relative to special elections if the vacancy occurred prior to the first nine months in office. A special election is to be called within 45 days of the vacancy and then the election must be held within a certain number of days with a provision to allow an election in September if it were to fall in July and August. It does not prohibit elections in July and August, however. These changes are to allow offices to be filled in a timely matter. Residency requirements were added as well.

- Legal Counsel for City Council is a recommendation by the Charter Commission that the Subcommittee accepted, however, the Mayor's office is very concerned about this provision and is not supportive. The subcommittee felt unanimously that this was a wise safety valve to have and would be used quite sparingly. This should be discussed further.
- Succession rules were changed. Currently the City Council convenes and would vote for an acting Mayor in the case of a vacancy in the office. The change states that the President of the Council would serve as the acting Mayor, with no vote by the City Council.
- A vacancy in a high level position would require notification by the Mayor to the City Council within 72 hours.
- A Charter Commission recommendation was to have a Committee to review Boards and Commissions. The Subcommittee felt that could be accomplished without putting it in the Charter. A Charter makes something constitutional and difficult to change. If something is important it can be put in an ordinance. There is a provision that says a city official cannot chair a committee, however, the Traffic Council is chaired by a city employee. The Subcommittee agreed to go along with the recommendation of the Charter Commission but will docket an item to exempt that provision by ordinance if necessary.
- A provision that reorganization plans could be initiated by the City Council was deleted as recommended by the Charter Commission because it had never been done.
- The powers of the School Committee are set by state law. The Charter Commission recommendation listing the various powers of the school committee in the Charter and the Law Department advised against that. The majority of the subcommittee felt that it was important to rewrite the Article on the School Committee because it was out of date, but that there was value in informing the citizenry about the duties of the School Committee.
- The threshold of required signatures was raised for group petitions, initiatives and referenda based on many other charters throughout the state.
- The requirement for charter review was changed to 15 years from the Charter Commission recommendation of 10 years.
- The Charter Commission recommended stating that zoning had to be not inconsistent with the Comprehensive Plan. The Subcommittee felt it would be problematic if the comprehensive plan and zoning are in conflict and could cause litigation issues. The Comprehensive Plan should be guide, but not controlling.
- Area Councils were left in the Charter and there was some sentiment in the Subcommittee that they should be in the ordinances instead. However, the subcommittee was only

reviewing Charter Commission recommendations and not creating new recommendations. The subcommittee agreed to accept the Charter Commission amendments.

- The Subcommittee agreed to the removal of statement of “previous elected offices held” on signature papers for office.

The Chair noted that he has heard many negative reactions about the changes to the Area Council section of the Charter. The Charter Commission recommendation is that the City Council decides how an area council is created and this is going to create a controversy. The Chair said he the Subcommittee was unaware of the controversy. This will require further discussions.

Law Department Comments

Maura O’Keefe, Assistant City Solicitor, explained that the Law Department looked at the proposed recommendations of the Subcommittee using general rules of charter construction. The Charter is supposed to be a lasting document and provide a framework for how the City should run. It should be done in broad strokes in order to meet that goal. Wordsmithing for the sake of wordsmithing should be avoided. It can create novel, unintended interpretations that could lead to unintended consequences. Reiteration or reinterpretation of statutes should also be avoided as it creates inherent conflict. Every day functions of government departments do not belong in the charter and are better left to policy creation. The Law Department is opposed to any suggested revisions that would fall under these principles and they are found throughout the recommended changes. In general, the Law Department has offered that while they do not comment on policy changes, as to legal form and character, the document is acceptable.

The purpose of the Law Department is outlined by ordinance and it is to provide legal advice and counsel to the City. This does not require allegiance to one department over another. It is the Law Department’s opinion that the provision in the Charter for independent Counsel to the City Council undermines the Law Department’s mandate. Changing one part of how the department is structured would be inherently divisive. A Committee member said, for example, there was an appearance of conflict between the City Council and the Mayor’s office on the Austin Street project. Would this not be an appropriate circumstance for independent counsel? Ms. O’Keefe stated that there is a process in place already to handle situations such as this. The City Council routinely approves appropriations for outside counsel for various departments throughout the City. Creation of a different process in the Charter is unnecessary. A Committee member pointed out that the Mayor would have to request the funding.

It was asked if wordsmithing would ever be appropriate. Ms. O’Keefe said that if changes were being made for a very specific purpose in order to clarify or rectify an inconsistency or provide a better path in the case where a provision was not working, would be appropriate instances. The change would have to be supported by debate so that if the intent were ever questioned, there would be a legislative history to support it.

The Chair asked about the review of the Charter Commission's recommendations. Councilor Krintzman noted that the Attorney General provided a legal review and signed off on the recommendations at the time.

Next Steps

Now that the recommendations are back to the full Committee, an item will be docketed to further discuss them and to bring the proposals forward for Home Rule Legislation. The Chair suggested cancelling the February 20th meeting as he would like the Committee to be able to have ample time to review the recommendations and it is school vacation week. Committee members felt it would be helpful to provide an opportunity for public comment on the proposed recommendations. The Chair will hold the March 6th meeting for that purpose and relative documents will be posted online in advance. A special meeting for March 13th was tentatively scheduled in order to have another opportunity for discussion. The regular Committee meeting on March 20th would then allow the Committee to vote out its recommendations to the full Council. If the City Council approves any amendments, the Mayor would need to sign the Home Rule Petition in order to send it to the state legislature.

The Chair would like the more controversial matters relating to Council composition and term limits recommended by the Charter Commission to be discussed in the full Programs & Services Committee and deferred for consideration until the fall. Budget discussions will be taking up several meetings in the spring and the summer is not an appropriate time to take up such matters.

Referred to Programs & Services and Finance Committees

#455-18 **Ordinance amendments to the Plastic Bag Reduction Ordinance**
COUNCILORS LEARY, NORTON, AUCHINCLOSS, BROUSAL GLASER, DANBERG, KALIS, MARKIEWICZ proposing ordinance amendments to Chapter 12, Section 71 by revising the definition of "reusable bag", revising the definition for retailers to include establishments of less than 3,500 sq. ft., and adding a 10-cent fee for paper bags provided by the retailer.

Action: **Programs & Services Approved as amended 6-0 (Councilors Baker and Albright not voting)**

Note: Councilor Leary provided explained that the original plastic bag ordinance went into effect in 2015 and one of the issues was whether or not to charge for paper bags at the time. The decision was to update the ordinance when the time came, with best practices. By adding the fee for paper bags, it helps change consumer habits and pushes people to remember to bring their own bags. It has been shown to be a very effective tool both nationally and internationally. Washington DC implemented a 5 cent fee on all bags and saw a 90% reduction in use of bags. Boston implemented their ordinance a few weeks ago and Cambridge implemented theirs about a year ago.

The retailer would keep the bag fee to offset any costs they may incur and it is a simple process to collect the fee. A sku code is added to the register and it appears on the customer's receipt. Some smaller businesses choose to write it on the receipt which is acceptable as well.

When the original ordinance went into effect, the intent was to include all retailers at some point, but there was an exemption for smaller establishments. Newton was among the first communities to put this type of ordinance into effect, however, there are now 91 communities involved and only 7 provide exemptions for smaller establishments. Newton exempted only about 6 retailers under the current ordinance. Councilor Leary noted that Commissioner Youngblood has requested that there be a one-year waiting period before the ordinance goes into effect for all establishments with no exemptions.

The proposed definition of a reusable checkout bag has changed to include material, durability and other requirements because using the thickness alone was not as effective as was hoped. The slightly thicker bags that are now being produced and provided in stores were specifically manufactured to get around the plastic bag ordinance. The goal is to have bags that can be reused for years and to avoid the use of fossil fuels.

Committee Comments/Questions

It was asked if any communities charge more than 10 cents. Councilor Leary did not know of any in Massachusetts and noted that Cambridge charges 10 cents and Boston 5 cents. Ireland charges about 25 cents. It was also asked how retailers determine the fee. Councilor Leary was unsure, but municipalities weigh the impact on lower income residents, so that is a factor in keeping the cost low. People who pay with vouchers or food stamps could be exempted if the Committee would like to add that. Boston has that exemption. The fee does not seem to make a big difference to the retailers, and some donate the fees.

A Committee member said the purpose of the ordinance is really to make people think about how they are using plastic or paper bags and whether they could make a more concerted effort to bring their own bags to comply with the intent and spirit of this ordinance.

Any bag that is contact with food is not considered a checkout bag, such as a produce bag, and would not be subject to this ordinance.

It was asked why newspaper bags are exempt. Councilor Leary said that while there might be some "biodegradable" bags that could be used, that might be confusing. Biodegradable plastic bags can also contaminate the recycling stream as they are difficult to distinguish from others. There may be some more viable products in the years to come, so this could be revisited at a later date.

Councilor Krintzman suggested several amendments that changed the format of numbering to lettering and changed "store" to "retail establishment".

The Committee had some questions about sales tax and how that is distributed to the city and the state.

The Committee voted to approve the ordinance, as amended, 6-0, subject to second call relative to the tax questions and legal review of the ordinance. The approved language is attached.

Clerk's Note: Councilor Leary has since submitted amended language. An explanatory memo and a draft ordinance incorporating the new amendments are attached. This item will be heard in Finance Committee as well.

#79-18 **Amendments to the plastic bag ordinance**
COUNCILORS LEARY, NORTON, AUCHINCLOSS, BROUSAL GLASER, DANBERG, KALIS, MARKIEWICZ, proposing amendments to **Chapter 12, Section 71. Plastic Bag Reduction Ordinance** to add a 10-cent fee for paper bags provided at point of sale, eliminate the small business exemption for retail space under 3,500 square feet, and update the definition of "reusable bag".
Action: **Programs & Services voted No Action Necessary 6-0 (Councilors Baker and Albright not voting)**

Note: Two similar items were inadvertently docketed. #455-18 is the active item, therefore, the Committee voted no action necessary on #79-18 as it is redundant.

Meeting adjourned.

Respectfully Submitted,

John B. Rice, Chair

PLASTIC BAG REDUCTION ORDINANCE DRAFT Newton MA**Declaration of findings and policy-Scope.**

The City Council hereby finds that the reduction in the use of plastic bags by commercial entities in the city is a public purpose that protects the marine environment, advances solid waste reduction and protects waterways. This ordinance seeks to reduce the number of plastic bags that are being used, discarded and littered, and to promote the use of reusable checkout bags by retail stores located in the city. Further, this ordinance seeks to increase the use of reusable bags.

(a) DEFINITIONS

The following words shall, unless the context clearly requires otherwise, have the following meanings:

~~(a)~~ "department" means the city's department of health and human services.

~~(b)~~ "commissioner", means the Commissioner of Health & Human Services or his/her designee.

~~(c)~~ "checkout bag", means a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include:

- (i) bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of a retail establishment;
- (ii) laundry or dry-cleaner bags;
- (iii) newspaper bags.

~~(d)~~ "recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

~~(e)~~ "reusable checkout bag", means a sewn bag with stitched handles that (1) can carry 25 pounds over a distance of 300 feet; (2) is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

Formatted: Font: Bold, Font color: Black

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

~~(f)~~ "retail establishment", means any commercial entity with retail space located in the City of Newton including but not limited to a restaurant, food or ice cream truck, convenience store, retail pharmacy, supermarket, or seasonal and temporary businesses. ~~It does~~ "Retail establishment" shall not include meals on wheels food delivery services to homebound the disabled or home bound seniors.

Formatted: No underline

(bd) REQUIREMENTS

(1) If any retail establishment provides ~~or sells~~ a checkout bag to customers, the bag shall be comply with the requirements of being either a recyclable paper bag or a reusable checkout bag.

(2) ~~A~~ retail establishment ~~store~~ that provides any type of checkout bag shall sell the checkout bag ~~at~~ for no less than ten cents (\$0.10). All moneys collected pursuant to this ordinance shall be retained by the store. ~~There is no cap on this fee.~~

(3) The Commissioner may promulgate rules and regulations to implement this section.

(ce) Effective DateEFFECTIVE DATE

All of the requirements set forth in this by-law shall take effect within one year of passage.

(df) EXEMPTIONS

No exemptions ~~will~~shall be allowed.

(eg) PENALTIES AND ENFORCEMENT

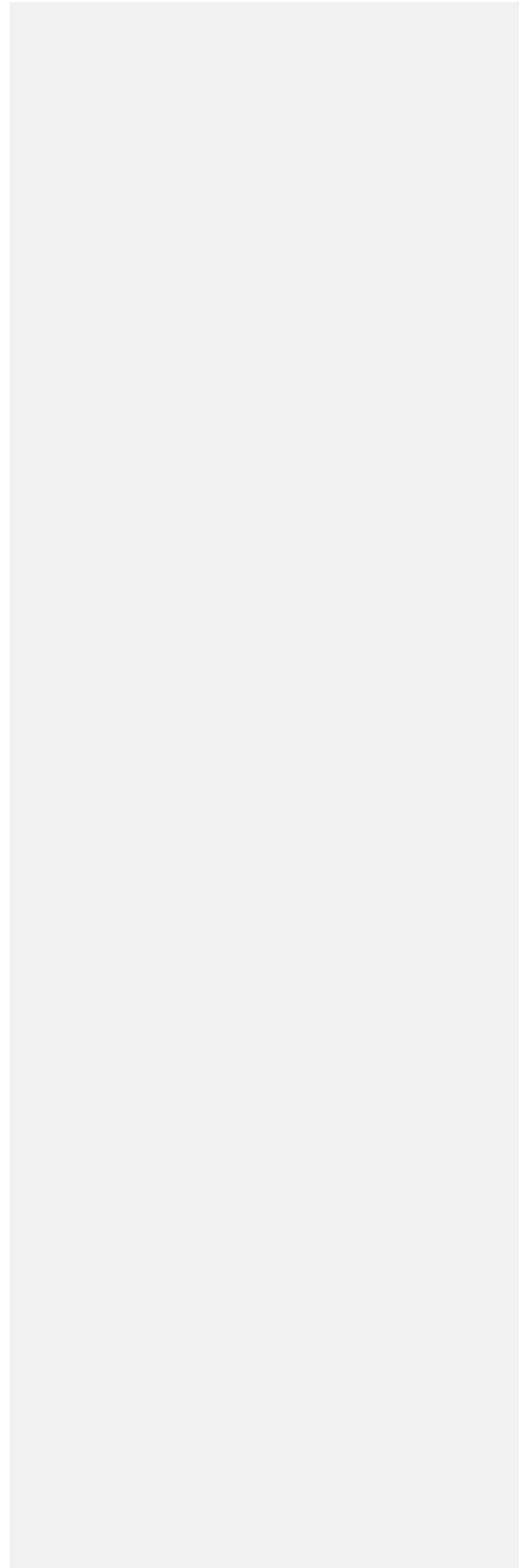
(1) Fine. Any retail establishment which violates any provision of this section or any regulation established by the commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation occurs shall constitute a separate offense.

(2) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this section, the commissioner of the health and human Services, or his or her designee, shall be enforcing persons.

(f) SEVERABILITY

It is the intention of the City Council that each separate provision of this Chapter shall be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this Chapter be declared to be

invalid by a court of competent jurisdiction, the remaining provisions of this Chapter shall remain valid and enforceable.



From: [Alison M. Leary](#)
To: [Karyn Dean](#)
Cc: [John Rice](#); [Barbara Brousal-Glaser](#); [Susan Albright](#); [Maria Scibelli Greenberg](#); [Joshua Krintzman](#); [Gregory R. Schwartz](#); [R. Lisle Baker](#); [David Kalis](#)
Subject: Plastic Bag Reduction Ordinance Draft Ordinance #455-18
Date: Friday, February 15, 2019 8:56:23 AM
Attachments: [Plasti Bag 455-18 Law Reviewed DRAFT COUNCIL ORDER.docx](#)

Dear Programs & Services Committee,

Please find attached the Law Department reviewed draft of the revised plastic bag ordinance.

The ordinance includes a change that the Committee did not consider, but I would like to propose on the floor of the Council. The change is the with regard to the effective date language. I am proposing that smaller retailers, with retail space of 3,500 square feet or less (who are currently exempt) will have a full year before they must comply with the ordinance, while the larger retailers will have a 6 month time frame. It does not seem reasonable to allow the retailers who are currently complying with the plastic bag reduction ordinance to wait a full year to add a fee on paper and to stop using the thicker 4 mil plastic bags that are currently legal but do not comply with the spirit or intent of this ordinance.

The changes include:

1. Added the words “whether for or not for profit” in the retail establishment definition
2. Please see the “effective date” language;
3. Slightly reworded the severability section (not a substantive change – just stylistic)

Thank you for your consideration of this proposal.

This email is informational only and not for discussion purposes due to OML rules.

Kind regards,

Alison M. Leary
Newton City Council
Ward 1
617-821-5619

#455-18 DRAFT

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO.

February , 2019

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON that the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Article IX** of **Chapter 12 PLASTIC BAG REDUCTION** as follows:

DELETE Section 12-71 in its entirety, effective September 1, 2019, and insert in its place the following language:

Sec. 12-71 Plastic Bag Reduction Ordinance

(a) Declaration of findings and policy-Scope.

The City Council hereby finds that the reduction in the use of plastic bags by commercial entities in the city is a public purpose that protects the marine environment, advances solid waste reduction and protects waterways. This ordinance seeks to reduce the number of plastic bags that are being used, discarded and littered, and to promote the use of reusable checkout bags by retail stores located in the city. Further, this ordinance seeks to increase the use of reusable bags.

(b) Definitions

The following words shall, unless the context clearly requires otherwise, have the following meanings:

"Department" means the city's department of health and human services.

"Commissioner" means the Commissioner of Health & Human Services or his/her designee.

"Checkout bag" means a carryout bag provided by a store to a customer at the point of sale. Checkout bags shall not include:

- (i) bags, whether plastic or not, in which loose produce or products are placed by the consumer to deliver such items to the point of sale or check out area of a retail establishment;
- (ii) laundry or dry-cleaner bags;
- (iii) newspaper bags.

"Recyclable Paper Bag" means a paper bag that is (1) 100 percent recyclable including the handles; (2) contains at least 40% post-consumer recycled paper content; and, (3) displays the words "recyclable" and "made from 40% post-consumer recycled content" (or other applicable amount) in a visible manner on the outside of the bag.

"Reusable checkout bag" means a sewn bag with stitched handles that (1) can carry 25 pounds over a distance of 300 feet; (2) is either (a) made of cloth or other machine washable fabric; or (b) made of plastic other than polyethylene (HDPE, LDPE, PETE, etc.) or polyvinyl chloride that is durable, non-toxic, and generally considered a food-grade material that is more than 4 mils thick.

"Retail establishment" means any commercial entity, whether for or not for profit, with retail space located in the City of Newton including but not limited to a restaurant, food or ice cream truck, convenience store, retail pharmacy, supermarket, or seasonal and temporary businesses. "Retail establishment" shall not include Meals on Wheels food delivery services to home bound persons with disabilities or home bound seniors.

(c) Requirements

(1) If any retail establishment provides a checkout bag to customers, the bag shall be either a recyclable paper bag or a reusable checkout bag.

(2) A retail establishment that provides any type of checkout bag shall sell it for no less than ten cents (\$0.10). All moneys collected pursuant to this ordinance shall be retained by the retail establishment.

(3) Any charge for a Checkout Bag shall be separately stated on a receipt provided to the customer at the time of sale and shall be identified as the "Checkout Bag Charge" thereon.

(4) The Commissioner may promulgate rules and regulations to implement this section.

(d) Effective date.

This ordinance shall take effect September 1, 2019 for any retail establishment with retail space of 3500 square feet or larger or with at least two (2) locations under the

same name within the city with retail space that totals 3500 square feet or larger; and shall take effect March 1, 2020 for all other retail establishments.

(e) Exemptions

No exemptions shall be allowed.

(f) Penalties and enforcement.

(1) Fine. Any retail establishment which violates any provision of this section or any regulation established by the commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation occurs shall constitute a separate offense.

(2) Whoever violates any provision of this section or any regulation established by the commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this section, the commissioner of the health and human Services, or his or her designee, shall be enforcing persons.

(g) Severability.

Each separate provision of this section shall be deemed independent of all other provisions herein, and if any provision of this section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this section shall remain valid and enforceable.

Approved as to legal form and character:

ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) RUTHANNE FULLER
Mayor