

CITY OF NEWTON
IN BOARD OF ALDERMEN
PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, MARCH 5, 2014

7:45 PM
Room 222

ITEMS SCHEDULED FOR DISCUSSION:

- #59-14 ALD. HESS-MAHAN AND BLAZAR requesting discussion with the Executive Department and the Health Care Advisory Committee concerning plans to implement recommendations contained in the First Report of the Health Care Advisory Committee to control the cost of health insurance while improving or maintaining the quality of care. [02/18/14 @ 6:39 PM]
- #60-14 HIS HONOR THE MAYOR, HEALTH AND HUMAN SERVICES COMMISSIONER ZALEZNIK, ALD. RICE, SCHWARTZ, LEARY, HARNEY AND DANBERG proposing amendments to Chapter 20 to include and regulate nicotine delivery products (such as e-cigarettes) in the same manner as tobacco products; to prohibit use of nicotine delivery products in places where use of tobacco products is prohibited; to regulate the sale of tobacco products and nicotine delivery products contain flavoring other than regular or menthol; to increase the minimum age for purchasing tobacco and nicotine delivery products to 21; to further regulate signage; and to regulate minimum cigar pricing and packing, blunt wrappers and roll-your-own machines. [02/24/14 @ 4:53 PM]
- #254-12(2) THE PROGRAMS & SERVICES COMMITTEE recommending an ordinance to ban single-use plastic bags at certain retail establishments in the City of Newton. [01/10/14 @ 3:36 PM]
- #200-13 ALD. JOHNSON requesting a discussion with the Parks & Recreation Department and the Department of Public Works to establish a process for managing the placement and removal of City, for-profit, and non-profit signs advertising events. [05/28/13 @ 9:26 AM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, please contact the Newton ADA Coordinator, Joel Reider, at least two days in advance of the meeting: jreider@newtonma.gov . or 617-796-1145. For Telecommunications Relay Service dial 711.

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #397-13 ALD. SANGIOLO on behalf of the URBAN TREE COMMISSION, proposing amendments to the Tree Preservation Ordinance. [10/28/13 @ 2:46 PM]
- #199-13 ALD. JOHNSON AND SANGIOLO requesting an update from the School Committee and School Department regarding the request from the Board of Aldermen to reduce the family cap on activity fees. [05/20/13 @ 11:05 PM]
- #145-12 ALD JOHNSON requesting a review by the Solicitor's office as to what constitutes "reorganization" per our City Charter. [05/16/12 @ 10:24PM]

REFERRED TO PROG. & SERV. AND PUBLIC SAFETY & TRANS COMMITTEES

- #410-13 ALD. JOHNSON, ALBRIGHT AND LINSKY requesting discussion with the Parks & Recreation, Police, Fire and Law Departments regarding options to decrease vandalism at the Albemarle Park (Halloran Recreation Complex) before April, 2014 [11/12/13 @ 4:15 PM]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #403-13 HIS HONOR THE MAYOR submitting the FY15-FY19 Capital Improvement Plan and Long Range Projection pursuant to section 5-3 of the Newton City Charter. [10/21/13 @ 9:59 AM]

REFERRED TO FINANCE AND PROGRAMS & SERVICES COMMITTEE

- #402-13 ALD. FULLER, GENTILE, RICE and LINSKY requesting a Home Rule Petition to amend Article 9 of the Charter to clarify that Neighborhood Area Councils shall maintain and control their own financial accounts and records, independent of City finances; and to further clarify that such independent financial accounts and records shall remain subject to City audit. [10/28/13 @ 10:18 AM]
- #399-13 ALD. LINSKY, HESS-MAHAN, ALBRIGHT, CROSSLEY, DANBERG, BLAZAR, LAREDO & SCHWARTZ requesting to re-charge a task force to devise recommendations as to best practices and/or potential regulatory approaches to achieve improvements regarding the use of leaf blowers in the City of Newton. [10/28/13 @ 7:01 PM]
- #398-13 ALD. BAKER & DANBERG requesting a discussion of a possible ordinance, regulations or otherwise, to complement zoning regulation of any licensed Registered Marijuana Dispensaries to respond to any secondary impacts so as to make the operation of such dispensaries as successful as possible. [10/28/13 @ 10:00 AM]
- #95-13(2) THE PROGRAMS & SERVICES COMMITTEE requesting an update from the Health Care Advisory Committee. [09/12/13 @ 9:49AM]
- #34-13 ALD. DANBERG, ALBRIGHT, BLAZAR, RICE, LINSKY AND CROSSLEY requesting a prohibition on polystyrene-based disposable food or beverage

containers in the City of Newton if that packaging takes place on the premises of food establishments within the City. [01/03/13 @ 11:01 AM]

#334-12 ALD. SWISTON AND LINSKY requesting a discussion with the Licensing Board regarding the licensing and permit requirements for non-profit organizations. [10/10/12 @ 3:52 PM]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

#257-12 RECODIFICATION COMMITTEE recommending (1) review of the Fees, Civil Fines/Non-Criminal Disposition contained in Chapter 17 LICENSING AND PERMITS GENERALLY and Chapter 20 CIVIL FINES/NON-CRIMINAL DISPOSITION CIVIL FINES to ensure they are in accordance with what is being charged and (2) review of the acceptance of G.L. c. 40 §22F, accepted on July 9, 2001, which allows certain municipal boards and officers to fix reasonable fees for the issuance of certain licenses, permits, or certificates.

REFERRED TO PROG & SERV, PUB. FAC., ZAP, AND FINANCE COMMITTEES

#256-12 ALD. HESS-MAHAN, SANGIOLO & SWISTON proposing an ordinance promoting economic development and the mobile food truck industry in the City of Newton. [08/06/12 @4:46 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#254-12 (3) PROGRAMS & SERVICES COMMITTEE proposing an ordinance to require a fee, charged to consumers, for the use of paper bags at certain retail establishments in the City of Newton. [01/10/14 @ 3:36 pm]

#229-12 RECODIFICATION COMMITTEE recommending a review and possible amendment to the *Board of Aldermen Rules & Orders 2012-2013* relative to review of draft ordinances by the Law Department.

REFERRED TO PROG. & SERV AND PUBLIC FACILITIES COMMITTEES

#36-12 ALD. CROSSLEY & FULLER requesting Home Rule legislation or an ordinance to require inspections of private sewer lines and storm water drainage connections prior to settling a change in property ownership, to assure that private sewer lines are functioning properly and that there are no illegal storm water connections to the city sewer mains.

A) Sewer lines found to be compromised or of inferior construction would have to be repaired or replaced as a condition of sale;

B) Illegal connections would have to be removed, corrected, and re-inspected in accordance with current city ordinances and codes, as a condition of sale.

[01/24/12 @ 8:07 AM]

REFERRED TO PROG & SERV, PUB. FACIL. AND FINANCE COMMITTEES

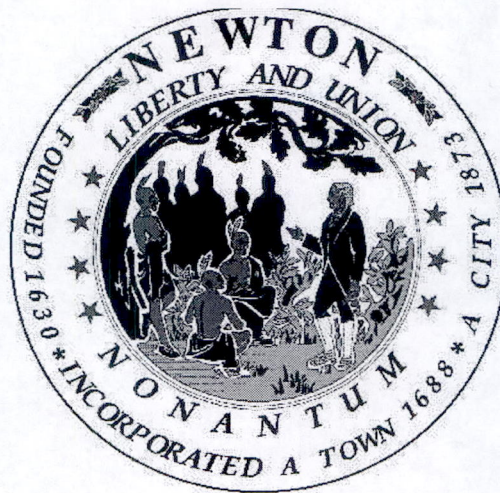
#312-10 ALD. LENNON, LAPPIN, SCHNIPPER, SANGIOLO requesting a discussion with the School Committee on its plans to address space needs in the Newton public schools. [10/27/10 @ 11:07 AM]

Respectfully Submitted,
Amy Mah Sangiolo

Clerk's Note: The full Report of the Health Care Advisory Committee can be found at <http://www.newtonma.gov/civicax/filebank/documents/55844/Report.pdf>

City of Newton

Health Care Advisory Committee



First Report

2013

Chapter 20

CIVIL FINES AND MISCELLANEOUS OFFENSES*

- Art. I** Smoking, Tobacco Products, [Nicotine Delivery Products](#) and Alcoholic Beverages, §§ 20-1—20-12
- Art. II.** Noise, §§ 20-13—20-19
- Art. III.** Civil Fines/Non-criminal Disposition, §§ 20-20—20-22
- Art. IV.** Light Trespass, §§ 20-23—23-49
- Art. V.** Miscellaneous Offenses, §§ 20-50—20-63

**ARTICLE I.
SMOKING, TOBACCO PRODUCTS AND ALCOHOLIC BEVERAGES**

Sec. 20-1. Distribution of Tobacco Products [and Nicotine Delivery Products](#).

No person in the business of selling or otherwise distributing cigarettes, or other tobacco or smoking products, [or nicotine delivery products](#) for commercial purposes, or any agent or employee of any such person, shall in the course of such business distribute any cigarettes, or other tobacco or smoking products [or nicotine delivery products](#) free to any person on any public street or sidewalk, or in any public park or playground, or any other public ground, or in any public building.

Any person who violates the provisions of this section shall be punished by a fine of not less than twenty (\$20.00) nor more than fifty (\$50.00) dollars for each violation. Every hour or part thereof in which a person engages in the conduct prohibited by this section shall constitute a single and separate violation. (Ord. No. R-224, 3-1-82; Rev. Ords. 1995, § 20-18; Ord. No. X-59, 10-7-03)

Sec. 20-2. Sale of tobacco products [and nicotine delivery products](#).

(a) *Declaration of findings and policy:* Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and, whereas at least one-half of all smokers begin smoking before the age of [eighteentwenty-one](#) (~~1821~~); and, whereas an estimated three thousand (3,000) minors begin smoking every day in the United States; and, whereas nicotine in tobacco has been found by the Surgeon General to be a powerfully addictive drug; and, whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and, whereas a city ordinance to restrict the access of minors to tobacco products is in the interest of public health; now, therefore, it is the policy of the City of Newton to discourage minors from experimenting with tobacco [and nicotine](#) and to make tobacco products [and nicotine delivery products](#) less accessible to minors.

(b) *Definitions:* For the purposes of this section, the following words shall have the meanings respectively ascribed to them by this section:

[Blunt wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other](#)

***Cross reference**—General penalty for code violations, § 1-6; police, Ch. 24

fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment. *Business Agent:* An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma or because of the provision of ingredient information.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under M.G.L. Chapter 64C, Section 1, Paragraph 1.

City: City of Newton.

Commissioner: The commissioner of health and human services of the City of Newton.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.

E-Cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

Health care provider: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services or employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care provider includes hospitals, clinics, health centers, pharmacies, drug stores and doctor and dentist offices.

~~*Self-service display:* Any display of tobacco products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.~~

Minor: Any individual who is under the age of ~~eighteen~~ twenty-one (~~18~~21).

Nicotine delivery product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Non-residential roll-your-own (RYO) machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not non-residential RYO machines.

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products or nicotine delivery products.

Retail tobacco store or retail nicotine delivery product store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, or nicotine delivery products, in which the entry of persons under the age of 21 is prohibited at all times, and maintains a valid tobacco and nicotine delivery product sales permit.

Self-service display: Any display of tobacco products or nicotine delivery products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

Smoke constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Vending machine: Any automated or mechanical self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product or nicotine delivery product.

Tobacco products: Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

(c) *Sales to minors prohibited:*

(1) No person shall sell tobacco products or nicotine delivery products or permit the same to be sold to a minor.

(2) *Required Signage and Notice of prohibition:*

(a) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public

Health and made available from the Commissioner. The notice shall be at least forty-eight (48) square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

(b) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Commissioner that discloses current referral information about smoking cessation.

(c) The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating "The sale of nicotine delivery products to minor under 21 years of age is prohibited." The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating "The use of e-cigarettes at indoor establishments may be prohibited by local law." The notices shall be posted conspicuously in such a manner that they may be readily seen by a person standing at, or approaching the cash register. The signs will be provided by the Commissioner.

(3) *Identification:* Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is ~~18~~21 years old or older. Verification is required for any person under the age of 27.

(d) *Tobacco and nicotine delivery product sales permit:*

(1) No person shall sell or otherwise distribute tobacco or nicotine delivery products within the city without first obtaining a tobacco and nicotine delivery product sales permit issued by the commissioner. Only owners of establishments with a permanent, non-mobile location in Newton are eligible to apply for a permit and sell tobacco and/or nicotine delivery products at the specified location in Newton.

(2) As part of the tobacco and nicotine delivery product sales permit application process, the applicant will be provided with a copy of this section. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco or nicotine delivery product sales regarding both state laws regarding the sale of tobacco to minors and this regulation.

(3) Each applicant selling or distributing tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco and nicotine delivery product sales permit can be issued.

(4) The fee for an initial tobacco and nicotine delivery product sales permit shall be determined by the commissioner based on the cost of administering the permit process. All such permits shall be renewed annually no later than June 1. The annual renewal fee shall be in an amount determined by the commissioner based upon the actual cost of administering the permit renewal process.

(5) A separate permit is required for each retail establishment selling tobacco and nicotine delivery products.

- (6) Each tobacco and nicotine delivery product sales permit shall be displayed at the retail establishment in a conspicuous place.
- (7) No tobacco and nicotine delivery product sales permit holder shall allow any employee to sell cigarettes, ~~or~~ other tobacco products, or nicotine delivery ~~until~~ products until such employee reads this regulation and state laws regarding the sale of tobacco to minors and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.
- (8) A tobacco and nicotine delivery product sales permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new tobacco and nicotine delivery product sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- (9) Issuance of a tobacco and nicotine delivery product sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- (10) A tobacco and nicotine delivery product sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

(e) Tobacco ~~products or nicotine delivery~~ products vending machines:

No person shall distribute or sell tobacco products or nicotine delivery products by the use of a vending machine.

(f) ~~Self-service~~ Self-service displays:

No person shall sell or offer for sale tobacco products or nicotine delivery products by means of a ~~self service~~ self-service display.

(g) Ban on Free Distribution, ~~and~~ on Single Cigarettes and on non-residential roll-your-own machines:

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes. or any non-residential roll-your-own machine.

(h) Prohibition of the Sale of Tobacco Products or Nicotine Delivery Products by Health Care Providers:

No health care provider located in the City of Newton shall sell tobacco products or nicotine delivery products or cause tobacco products or nicotine delivery products to be sold. No retail establishment that operates maintains or employs a health care provider within it, such as a pharmacy or drug store, shall sell tobacco products or nicotine delivery products or cause tobacco products or nicotine delivery products to be sold.

(i) Cigar sales regulated:

No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for

retail sale at \$5.00 or more. This section shall not apply to the sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more; or to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Newton; or to a retail tobacco or retail nicotine delivery store.

(j) Sale of flavored tobacco products prohibited:

No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco product or nicotine delivery product to a consumer.

(k) Prohibition of the sale of blunt wraps:

No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale blunt wraps.

(l) Violations and penalties:

- (1) A person who violates the provisions of subsection (d)(1) of this section shall be subject to a fine of three hundred dollars (\$300.00) for each violation. Every day in which a person engages in conduct prohibited by subsection (d)(1) of this section shall constitute a single and separate violation.
- (2) A violation of any provision of this section other than subsection (d)(1) shall be subject to:
 - (a) In the case of a first violation, a fine of one hundred dollars (\$100.00).
 - (b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the tobacco and nicotine delivery product sales permit shall be suspended for seven (7) consecutive business days.
 - (c) In the case of a third violation within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the tobacco and nicotine delivery product sales permit shall be suspended for thirty (30) consecutive business days.
 - (d) In the case of four or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the tobacco and nicotine delivery product sales permit shall be revoked for sixty (60) consecutive business days or for the remainder of the permit term, whichever is longer.
 - (e) The tobacco permit holder shall be assessed a fine according to the schedule stated in this subsection for each violation of any provision of this section, other than subsection (d)(1), occurring on the premises governed by the permit. In the event of a sale or free distribution of a tobacco product or nicotine delivery product to a minor made by an employee of the permit holder, such employee shall also be subject to a fine in accordance with the schedule stated in this paragraph.
 - (f) Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension

of the tobacco and nicotine delivery product sales permit for thirty (30) consecutive business days.

- (3) The commissioner shall suspend or revoke a tobacco and nicotine delivery product sales permit granted pursuant to this section upon determination that a permit holder has committed three (3) violations of this section within three (3) years, calculated from the date of the first offense. The commissioner shall provide notice to the permit holder of the intent to suspend or revoke a tobacco and nicotine delivery product sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the commissioner's decision and the reasons therefore, in writing. All tobacco products and nicotine delivery products shall be removed from the premises upon suspension or revocation of the tobacco and nicotine -salesdelivery sales permit. Failure to remove shall constitute a separate violation of this section. A permit holder whose permit has been revoked may not apply for a new permit prior to the expiration of one (1) calendar year following the date of revocation.

(jm) *Severability*: The provisions of this section are severable. If any provision of this section or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application. (Ord. No. T-241, 10-21-91; Ord. No. T-293, 8-9-93; Ord. No. T-295, 9-7-93; Rev. Ords. 1995, § 20-20-18A; Ord. No. X-59, 10-7-03; Ord. No. X-175, 05-26-05; Ord. No. Z-55, 11-06-09; Ord. No. Z-57, 11-16-09)

Sec. 20-3 – 20-4. Reserved.

Sec. 20-5. Public consumption of alcoholic beverages.

(a) No person shall drink, consume or possess an open bottle, can, or container of any intoxicating liquor or alcoholic beverage as defined in General Laws, chapter 138, section 1, while in or upon public parks, playgrounds, recreation or conservation areas, public buildings, public parking lots and public ways, private parking lots and private ways to which the public has access.

(b) The prohibition of subsection (a) of this section shall apply in, on or outside of an automobile or other motor vehicle but shall not apply in or upon:

- (1) any private parking lot and private way to which the public has access where prior consent has been obtained from the owner or authorized person in control thereof, and provided further that no disturbance or annoyance is created thereby;
- (2) any public property specified in subsection (a) where prior express consent by way of a permit has been issued from the chief of police or his duly authorized agent in accordance with the provisions of section 17-5 of the Revised Ordinances; and provided further that no disturbance or annoyance is created thereby.

(c) Whoever remains in, on, or upon any premises described herein in willful violation of this section may be arrested without a warrant, in accordance with chapter 272, section 59 of the General Laws by an officer authorized to serve criminal process in the place where the offense is committed, if such person is unknown to such officer.

(d) All alcoholic beverages or intoxicating liquors being used in violation of this section shall be seized and safely stored until final adjudication of the charge against the person or persons affected, at which time

they shall be returned to the person or persons entitled to lawful possession unless, as a result of said adjudication, such alcoholic beverages or intoxicating liquors are ordered confiscated or seized to be disposed of according to the General Laws or as the court directs.

(e) Anyone found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars (\$50.00) for each such violation. (Rev. Ords. 1973, § 14-17; Ord. No. 13, 9-3-74; Rev. Ords. 1995, § 20-17)

Cross reference—Permits for the public consumption of alcoholic beverages, § 17-5

Sec. 20-6. Prohibition of alcoholic beverage and tobacco or nicotine delivery product advertising or promotion in or on city buildings, facilities, land, and in or on public transportation vehicles.

(a) *Definitions:* For the purposes of this section, the following words shall have the meanings respectively ascribed to them by this paragraph:

Alcoholic beverage advertisement: Any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of alcoholic beverage, a trademark of an alcoholic beverage or a trade name associated exclusively with an alcoholic beverage; or any sign which is used for the purpose or effect of promoting the use or sale of an alcoholic beverage through such means as, but not limited to, the identification of a brand of an alcoholic beverage, a trademark of an alcoholic beverage or a trade name associated exclusively with an alcoholic beverage.

Nicotine delivery product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Person: Any natural person, firm, partnership, association, corporation, limited liability corporation, company or organization of any kind, or other legal entity.

Public place: Any building, facility or other structure owned or operated by the city including school buildings and grounds or any land or property owned or operated by the city.

Public transportation vehicle: Buses, taxis, and other means of transportation the operation of which is subject to licensing or other grant of permission by the city pursuant to these revised ordinances or the general laws, including bus shelters and indoor platforms by which such means of transportation may be accessed.

Sign: A permanent or temporary structure, device, letter, word, two (2) or three (3) dimensional model, insignia, banner, streamer, display, emblem, or representation which is designed to attract attention.

Tobacco product: A cigarette, cigar, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

Tobacco or nicotine delivery product advertisement: Any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors, or any other indicia of product identification identical or similar

to, or identifiable with, those used for any brand of tobacco [or nicotine delivery](#) product, a trademark of a tobacco [or nicotine delivery](#) product or a trade name associated exclusively with a tobacco [or nicotine delivery](#) product; or any sign which is used for the purpose or effect of promoting the use or sale of a tobacco [or nicotine delivery](#) product through such means as, but not limited to, the identification of a brand of a tobacco [or nicotine delivery](#) product, a trademark of a tobacco [or nicotine delivery](#) product or a trade name associated exclusively with a tobacco [or nicotine delivery](#) product.

(b) Alcohol and tobacco [or nicotine delivery](#) products, advertising and promotion prohibited: No person shall place, caused to be placed, maintain or cause to be maintained a sign containing an alcoholic beverage advertisement or a sign containing a tobacco [or nicotine delivery](#) product advertisement in or on a public place or in or on a public transportation vehicle. This section is in addition to and not in substitution for the provisions of chapter 30 of these revised ordinances.

(c) Removal:

- (1) The city department or agency having control over a public place where a sign is posted in violation of subsection (b) is hereby authorized to remove such sign, provided that the city department or agency shall, as soon as reasonably possible, provide notice of such removal to the owner of the sign, if the name and address of the owner is readily ascertainable from the sign or if the city department or agency has received notice as to the name and address of the owner of the sign.
- (2) A sign so removed shall be stored for up to thirty (30) days during which time the sign owner or someone designated by the sign owner may reclaim the sign. If a sign removed pursuant to subsection (c)(1) is not reclaimed within thirty (30) days of removal, then the sign shall be declared to be unclaimed surplus property in the possession of the city department or agency which removed such sign and such sign shall be disposed of by the purchasing agent of the city pursuant to section 2-186(b)(7) of these revised ordinances.
- (3) In the case of a public transportation vehicle, the owner or operator of such vehicle shall remove a sign found to be in violation of subsection (b) within 24 hours of a request by the city to remove such sign. Failure to remove a sign within such timeframe shall be cause for revocation of any license or permission granted by the city in connection with the operation of such public transportation vehicle.

(d) Nuisance, abatement: A sign posted in violation of subsection (b) shall constitute a public nuisance and the city shall have the authority to abate such nuisance pursuant to the provisions of subsection (c) above. (Rev. Ords. 1995, Ord. V-184, 6-29-98)

Editor's note—Ordinance V-184 contained a detailed Declaration of legislative findings and intent, which is on file in the records of the Board of Aldermen.

Sec. 20-7: Smoking prohibited – Sidewalks and Other Public Property

(a) No person shall smoke, possess or carry a lighted or smoldering cigarette, cigar, or pipe of any kind or any other smoking article at the following locations:

(1) Upon the sidewalk at:

Albemarle Road, East side of easterly roadway from its intersection with Watertown Street northerly 299 feet.

Edinboro Street, West side from its intersection with Watertown Street northerly 257 feet.

Watertown Street, North side from its intersection with Albemarle Road (easterly roadway) easterly to its intersection with Edinboro Street;

(2) Upon the sidewalk or other public property within a nine hundred (900) foot perimeter of the property line of Newton North High School grounds.

(b) The Commissioner of Public Works shall erect and maintain signs indicating the locations designated for the smoking prohibition. Signs shall be erected so as to adequately notify the public of such prohibition and the areas affected thereby.

(c) The Commissioner of Health and Human Services and/or his or her designee(s) shall enforce the provisions of this ordinance. The Commissioner or his or her designee(s) shall, for an initial violation of this section, and may for any subsequent violation, afford the violator the option of enrolling in a smoking cessation/education program approved by the Commissioner and/or his or her designee(s). Proof of completion of a smoking cessation/education program approved by the Commissioner or his or her designee shall serve in lieu of the civil fines set forth in Section 20-21. (Rev. Ords. 2001, Ord. X-14, 4-1-02; Ord. No. Z-17, 12-17-07)

Sec. 20-8 E-cigarette usage – locations prohibited

The use of e-cigarettes is prohibited wherever smoking is prohibited under M.G.L Chapter 270, Section 22 (the Smoke-Free Workplace Law”), and in all locations listed in Section 20-7 of this ordinance. The Commissioner of Health and Human services and/or his or her designee(s) shall enforce this section in accordance with Sec. 20-7(c)

Secs 20-~~89~~—Sec. 20-12. Reserved.

NEWTON'S TOBACCO ORDINANCE

Chapter 20
Article I

March 5, 2014

BACKGROUND

- Last revision Nov. 2009 when tobacco products were prohibited from places where a healthcare provider works
- State Tobacco Control program funding reduced significantly in mid-2000's, compliance checks ended in 2009
- Massachusetts Department of Public Health offered new grants for FY12
- 5 Community Collaborative includes Newton, Brookline, Watertown, Belmont and Arlington
- Funding is policy focused
- Includes consultant support

COMPLIANCE CHECK RESULTS FY 12-13

- **3 youth cigarette sales in FY 12**
 - 128 Gas, 2 times
 - Auburndale Discount Wine & Liquors
- **3 youth cigarette sales in FY13**
 - Mr. K's
 - Newton Tire
 - Grocery Garrison FDA check

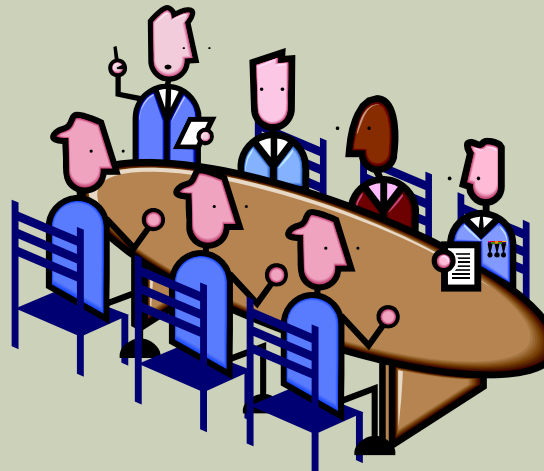


COMPLIANCE CHECK RESULTS FY14

- **6* youth sales in FY14 (ongoing)**
 - **Manny's Food Mart**
 - Philly's blunt (mini-cigar) \$1.50
 - **Highlander Farms**
 - FDA check/cigarettes
 - **J&S Mobil, CVS Needham St.,
Upper Falls Beverage Store, Star Market**
 - Cigarettes
 - **Vape Daddy***
 - Minor entered store & was offered sample, but store is currently unregulated so no violation* occurred

WHERE WE ARE

- Health Advisory Council meetings in March, June, November 2013
 - Recommendations focused on keeping youth away from tobacco and nicotine
- Meeting and consultations with Youth in Fall 2013
- Community Feedback
- Docketed by Mayor, Commissioner and 5 aldermen



HAC RECOMMENDATIONS

- Expand regulations to include nicotine delivery products
 - Would capture e-cigarettes
- Include cessation sign requirement
- Include sign requirements for nicotine delivery products
- Include minimum cigar package size and price
- Ban blunt wraps
- Ban flavored tobacco products
- Ban non-residential roll-your-own machines (RYO)
- Raise the minimum purchase age to **21** years old



HAC ITEMS CONSIDERED, NOT RECOMMENDED

- Compliance with minimum DOR pricing
- Capping or reducing the number of permits
- Banning redemption of coupons
- Banning tobacco sales in educational institutions



In Newton,
it is **ILLEGAL** to sell or give
TOBACCO and
NICOTINE DELIVERY
products to **ANYONE UNDER**
21.

You could be **FINED** up to **\$300.**

For questions or concerns call (617) 556-1430
Newton Department of Health & Human Services

In Newton,

It is **ILLEGAL**
to sell or give
TOBACCO
and **NICOTINE DELIVERY** products
to **ANYONE**
UNDER 21.

**You could be
FINED up
to \$300.**

For questions or concerns call (617) 796-1420
Newton Department of Health & Human Services

IMPORTANT NOTICE TO RETAILERS AND CUSTOMERS:

THE "ORDINANCE OF THE CITY OF NEWTON SALE OF TOBACCO PRODUCTS & NICOTINE DELIVERY PRODUCTS," EFFECTIVE 6/1/2014, IS STRICTER THAN MASSACHUSETTS STATE LAW, WHICH READS:

WHOEVER SELLS A CIGARETTE, CHEWING TOBACCO, SNUFF OR ANY TOBACCO IN ANY OF ITS FORMS TO ANY PERSON UNDER THE AGE OF EIGHTEEN OR, NOT BEING HIS PARENT OR GUARDIAN, GIVES A CIGARETTE, CHEWING TOBACCO, SNUFF OR TOBACCO IN ANY OF ITS FORMS TO ANY PERSON UNDER THE AGE OF EIGHTEEN SHALL BE PUNISHED BY A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS FOR THE FIRST OFFENSE, NOT LESS THAN TWO HUNDRED DOLLARS FOR A SECOND OFFENSE AND NOT LESS THAN THREE HUNDRED DOLLARS FOR ANY SUBSEQUENT OFFENSE. MGL CH.270 §§6,7

**IMPORTANT NOTICE TO
RETAILERS AND
CUSTOMERS:**

**THE "ORDINANCE OF THE
CITY OF NEWTON SALE
OF TOBACCO PRODUCTS
& NICOTINE
DELIVERY PRODUCTS,"
EFFECTIVE
XX/XX/2014, IS
STRICTER THAN
MASSACHUSETTS STATE
LAW, WHICH READS:**

**WHOEVER SELLS A
CIGARETTE, CHEWING
TOBACCO, SNUFF OR
ANY TOBACCO IN ANY OF
ITS FORMS TO ANY
PERSON UNDER THE AGE
OF EIGHTEEN OR, NOT
BEING HIS PARENT OR
GUARDIAN, GIVES A
CIGARETTE, CHEWING
TOBACCO, SNUFF OR
TOBACCO IN ANY OF ITS
FORMS TO ANY PERSON
UNDER THE AGE OF
EIGHTEEN SHALL BE
PUNISHED BY A FINE OF
NOT LESS THAN ONE
HUNDRED DOLLARS FOR
THE FIRST OFFENSE,
NOT LESS THAN TWO
HUNDRED DOLLARS FOR
A SECOND OFFENSE AND
NOT LESS THAN THREE
HUNDRED DOLLARS FOR
ANY SUBSEQUENT
OFFENSE. MGL
CH.270 §§6,7**

REGULATIONS IN OTHER COMMUNITIES

- **Minimum age: 12 communities**
 - **21:** Needham (2005), Sharon (2013), Arlington (2015), Canton (2014), Ashland (2014), Dedham (2014)
 - **19:** Brookline (2013), Belmont (2012), Watertown (2012), Westwood (2013), Walpole (2013), Sudbury (2014), Scituate (2014)
 - **Nationally to 19:** Alaska, Alabama, Utah, New Jersey, 3 NY Counties
 - **Nationally to 21:** NYC

REGULATIONS IN OTHER COMMUNITIES

■ E-cigs/Nicotine Delivery Products

- 44 percent of the state population (100 communities: Arlington, Boston, Dedham, Watertown, Westwood, Somerville, Needham)

■ Minimum cigar pricing

- 41 communities, 21.8 percent of the state's population (Boston, Westwood, Arlington, Needham, Ashland, Dedham)

■ Blunt wrap ban

- 53 communities (Boston, Westwood, Arlington, Needham, Ashland, Dedham)

DRAFT

#254-12(2)

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO. ____

March ____, 2014

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton Massachusetts, 2012, as amended, be and hereby
are further amended as follows:

Add a new **ARTICLE IX.** to Chapter 12 as follows:

Section 12-71 Plastic Bag Reduction Ordinance.

(a) **Short Title.** This Section may be cited as the "Plastic Bag Reduction Ordinance"
of the City of Newton.

(b) **Declaration of findings and policy—Scope.**

(1) The Board of Aldermen hereby finds that the reduction in the use of plastic bags by commercial entities in the City of Newton (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 reduce the use of paper bags, due to their greater use of natural resources and higher cost impacts on retailers. This Ordinance also seeks to ensure that customers using reusable checkout bags are made aware of the need to keep those bags sanitized between uses in order to protect against the transmission of food-borne illnesses.

(c) **Definitions.**

(1) 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 City's Commissioner of Health and Human Services.

DRAFT

#254-12(2)

(c) "Checkout Bag" means a carryout bag provided or sold by a Retail Establishment to a customer at the point of sale. A Checkout Bag shall not include

(i) bags, whether plastic or not, in which loose produce or products are placed by a consumer to deliver such items to the point of sale or check-out area of a Retail Establishment;

(ii) laundry or dry-cleaner bags; or

(iii) newspaper bags.

(d) "Recyclable Paper Bag" means a paper bag that is 100 percent recyclable and contains at least 40% post-consumer recycled content, and displays the words "Recyclable" and "made from 40% post-consumer recycled content" in a visible manner on the outside of the bag.

(e) "Reusable Bag" means a bag with handles that is specifically designed and manufactured for multiple reuse and is either polyester, polypropylene, cotton or other durable material, or durable plastic that is at least 3.0 millimeters in thickness.

(f) "Retail Establishment" means any commercial enterprise, ~~defined as the following~~, whether for or not-for profit, including, but not limited to restaurants, pharmacies, convenience and grocery stores, liquor stores, seasonal and temporary businesses, ~~farmers' markets~~, jewelry stores, household goods stores, clothing stores, shoe stores, and commercial enterprises operating or participating in farmers' markets, street fairs or festivals, or bazaars or street fairs.

(d) **Requirements.**

(1) If a Retail Establishment provides or sells Checkout Bags to customers, such bags shall be either a Recyclable Paper Bag or a Reusable Bag. Public information advising customers to sanitize Reusable Bags to prevent food-borne illness must be prominently displayed or communicated at the point of provision or upon sale.

(2) The Commissioner shall have the authority to promulgate regulations to accomplish any of the provisions of this Section.

(3) Each Retail Establishment as defined herein shall comply with this Section.

(e) **Effective Date.**

Comment [m1]: Public service information? Consider having Commissioner provide uniform acceptable language for signs.

Comment [m2]: Communicated how? By the salesperson talking to each customer?

DRAFT

#254-12(2)

This Section shall take effect one hundred and eighty (180) days from the date of enactment.

(f) **Exemption.**

(1) The Commissioner may exempt a Retail Establishment from the requirements of this Section for a period of up to six (6) months, upon a finding by the Commissioner that the requirements of this Section would cause undue hardship to a Retail Establishment. An "undue hardship" shall only be found in circumstances where a Retail Establishment requires additional time in order to draw down an existing inventory of single-use plastic check out bags or paper bags which do not meet the definition of recyclable paper bag. Any Retail Establishment receiving an exemption shall file with the Commissioner monthly reports on inventory reduction and remaining stocks.

(2) Any Retail Establishment shall apply for an exemption to the Commissioner using forms provided by the Department, and shall allow the Commissioner or his or her designee, access to all information supporting its application.

(3) The Commissioner may approve the exemption request, in whole or in part, with or without conditions

(4) The Commissioner, by regulation, may establish a fee for exemption requests.

(g) **Enforcement.**

(1) **Fine.** Any Retail Establishment which shall violate any provision of this Section or any regulation established by the Commissioner shall be liable for a fine of not more than \$300 and each day's a violation occurs shall constitute a separate offense.

(2) Whoever violates any provision of this Section 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.

(h) **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.

Comment [m3]: Is this the intent? Or is each time a plastic bag provided or sold to a customer a separate offense, no matter how many occur in a day? Brookline, for example, provides that no more than 1 penalty shall be imposed within a 7 calendar day period. (They also have a warning plus a graduated penalty, but that's them).

DRAFT

#254-12(2)

-And-

In Sec. 20-21. Enforcing persons and revised ordinances subject to civil fine.

Amend paragraph (b), HEALTH AND HUMAN SERVICES DEPARTMENT, by adding after CITY ORDINANCES, Any offense, the following:

.....PENALTY

Section 12-71. Plastic Bag Reduction Ordinance

() Any offense\$300.00

Approved as to legal form and character:

(SGD)
City Solicitor

Under suspension of Rules
Readings Waived and Adopted
___ yeas and ___ nays

(SGD)
City Clerk

(SGD)
Mayor