

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, APRIL 9, 2014

Present: Ald. Sangiolo (Chairman), Norton, Kalis, Hess-Mahan, Blazar, Leary and Rice

Absent: Ald. Baker

Also Present: Ald. Crossley, Laredo, Albright, Lennon, Danberg and Schwartz

City Staff Present: Marie Lawlor (Assistant City Solicitor), Bob DeRubeis (Commissioner, Parks & Recreation), Carol Schein (Open Space Coordinator), Dori Zaleznik (Commissioner, Health and Human Services), Teresa Kett (Public Health Program Specialist), Alice Ingerson (Community Preservation), Marc Welch (Director, Urban Forestry), Karyn Dean (Committee Clerk)

Appointment by His Honor the Mayor

#85-14 LAUREN DIGERONIMO, 18 Eddy Street, West Newton, appointed as a member of the URBAN TREE COMMISSION for a term to expire March 1, 2017.
(60 days 05/16/14) [03/10/14 @ 3:48PM]

ACTION: **APPROVED 7-0**

NOTE: Ms. DiGeronimo joined the Committee. She explained that she works in communications and has lived in Newton for a couple of years. Her appreciation for trees in the community and the environment has led her to volunteer for the Urban Tree Commission.

The Committee was pleased to meet her and approved her appointment unanimously.

Appointment by the President of the Board

#79-14 CARL COHEN, 15 Magnolia Avenue, Newton, appointed as a member of the BIOSAFETY COMMITTEE for a term to expire April 1, 2015.
(60 days 05/16/14) [03/6/14 @ 12:29PM]

ACTION: **APPROVED 7-0**

NOTE: Mr. Cohen joined the Committee and explained that he is a scientist by training and a professor of medicine and cellular biology for 20 years at Tufts Medical School. He then went into the biotech industry in and around Boston and currently runs his own consulting company doing organization, management and leadership training for science executives and scientists. When he was at St. Elizabeth's Hospital he was Chair of their Institutional Biosafety Committee for 15 years so he is familiar with the issues that might come before the Biosafety Committee. Mr. Cohen is also president of the Historical Society in Newton. Mr. Cohen noted that the City of Newton's ordinance governing the Biosafety Committee needs to be updated. Guidelines need to be established even if they are reiterations of state and federal guidelines because as it stands Newton's are insufficient. Guidelines would protect the citizenry as well as enable companies to move to Newton and do work here.

The Committee thanked Mr. Cohen and approved his appointment unanimously.

Appointment by His Honor the Mayor

#83-14 EDWARD “TED” MARPLE, 12 Ohio Avenue, Newton Upper Falls, appointed as a member of the BIOSAFETY COMMITTEE for a term to expire March 31, 2016.
(60 days 05/16/14) [03/10/14 @ 3:48PM]

ACTION: **APPROVED 7-0**

NOTE: Mr. Marple joined the Committee and noted that he has lived in Newton for 12 years. He has been involved in the biotech industry for about 20 years and is currently the COO of small contract research organization based in Worcester which does gene synthesis through protein production. He sees great opportunity for Newton to welcome companies into the City and it’s been puzzling to him that there aren’t more here. There is a lot of interest and if Newton can provide some guidance to companies and education to the public it would pave the way for biotech companies to come here. The City and the area are rich with financial resources, universities, educated people and the location is ideal for the industry. The Committee asked if he was familiar with other communities’ guidelines. He explained that most communities have them and in Worcester, for example, they have streamlined the permitting process. They work with the Fire Department and make it a one-stop shop for companies. There are plenty of examples around Newton from which to draw to inform possible well-defined guidelines for Newton. The clearer the guidelines, the more likely companies will come to Newton.

The Committee thanked Mr. Marple for his service and approved his appointment unanimously.

Appointment by His Honor the Mayor

#84-14 JAY SCHWARTZ, 200 Upland Road, Newtonville, appointed as a member of the BIOSAFETY COMMITTEE for a term to expire March 31, 2017.
(60 days 05/16/14) [03/10/14 @ 3:48PM]

ACTION: **APPROVED 7-0**

NOTE: Mr. Schwartz joined the Committee. He explained that he had a lab at MIT and has the responsibility for industrial and chemical hygiene, rDNA compliance and worked up to BL2 and higher. As such, he is very familiar with the local, state and federal guidelines, their rationale, and how to apply them in a practical way. He became a consultant in the start-up community on how to get a business permitted and running. The communities around Newton are more conducive to setting up shop. He had wanted to set up his own company in Newton but it was too difficult with the ordinance that is currently in place and there was not enough guidance on key issues such as sewage, waste disposal and storage, etc. Therefore, his company went to Waltham which did have guidelines. He would like to work on getting an updated ordinance that encourages safety, entrepreneurship, predictability and growth in the City.

The Committee approved Mr. Schwartz’s appointment with thanks for his service.

#397-13 ALD. SANGIOLO on behalf of the URBAN TREE COMMISSION, proposing amendments to the Tree Preservation Ordinance. [10/28/13 @ 2:46 PM]

ACTION: **APPROVED AS AMENDED 7-0**

NOTE: Marc Welch, Director of Urban Forestry joined the Committee. Proposed changes to the tree ordinance were attached to the agenda. The primary concern for making changes to the ordinance was relative to some finding loopholes in the current ordinance to remove large numbers of trees from properties in order to develop them. This has led to problems in neighborhoods and loss of trees in the City that were meant to be protected.

There are currently two main criteria considered in order to be exempt from the ordinance: own the land for 12 months; and the property has to be occupied. The term “occupied” became difficult to define. The proposed changes below target those two areas and hopefully address the loopholes that were being exploited. Please see summary of proposed changes, attached, for more detail.

Exempt Lot Criteria

At the time of tree removal, a lot:

- Must be occupied (see below)
- Must be owned by the same person for 90 days leading up to removal
- Must remain as a dwelling with person(s) living in it for 18 months following date of tree removal
- Must be owned by the same person for 18 consecutive months following date of tree removal.

Occupied Lot Criteria

At the time of tree removal:

- The lot must have a legally constructed dwelling
- The dwelling must be a permanent structure
- The dwelling must be used primarily as a residence
- The dwelling is being legally lived in
- The dwelling must have legally permitted and functioning water, sanitary sewer, and electrical service.

There are certain considerations that can be made and appeals that can be made in special circumstances, such as a death. The appeal process to the Mayor remains intact. If the property is in a trust, as long as the custody of the trust can be logically followed, Mr. Welch did not see any problems there. Renting a property is not an issue, so long as the property has the same owner for the required time frame. Owner occupation is not a requirement.

By way of research, Mr. Welch looked at 2011 and found there were 110 unique addresses that obtained exterior work permits. Of that number about 50-60 received a tree removal permit from Mr. Welch as required; about 6 did not get a permit but did come to him after the removal for a sign-off of the work and no problems were found; approximately 34 of those homes are still owned by the same owner and would have met the 18-month proposed requirement. That left 21 of the 2011 permits that were obtained by developers that either intentionally or unintentionally

circumvented the rules. In 2012 and 2013, he found that about half of the “suspicious” looking tree removals were done by the same people and feel like builder and developer situations that were filing exemption forms. He feels the proposed changes provide a more level playing field for those developers and builders who are following the rules, and the residential homeowners would not be impacted by doing some tree removal work as they are staying in their homes for the required amount of time, presumably.

The Committee wondered if there needed to be more criteria added to define “occupied” and what “lived in” means. Mr. Welch felt the proposed amendments gave sufficient criteria to judge that. He noted that a builder is going to need to take a house down eventually which negates the criteria of having a dwelling on the property and the 18-month waiting period seems long enough to be a deterrent.

It was asked what the responsibility would be if a purchase and sale agreement required removal of trees prior to sale. Mr. Welch said the person buying the home is liable for filing a tree removal permit and tree replacement. If the seller removes the trees and then sells the property before the 18-month period is up, the new buyer will have to assume the liability of violating the tree ordinance. He noted that he often hears about instances in which many trees are being cut down as neighbors generally report that kind of activity.

Committee members asked if larger trees could incur a higher penalty or replacement ratio as they make up the canopy of Newton in a way that smaller trees cannot. Or perhaps there could be more of an incentive to save the larger trees from removal. Mr. Welch noted that by and large he is walking a site with a developer from the very beginning of the process. When there is an opportunity to point out a tree that really should be given particular consideration, he will do it and since he has built up a rapport with many builders/developers that is generally a better way to approach it. He noted that the Urban Tree Commission has talked about historic or heritage tree designation and protection. Ald. Sangiolo said she spoke with members of the Historic Commission and they are interested in pursuing historic tree preservation. Something may be coming from them soon.

The fines are set at the maximum allowable limit which is \$300 per tree, per day and the violator still needs to comply with the replacement requirements on top of that. Typically, the City warns people the first time and if it happens again, fines are levied. Some Committee members said that developers just see that as a cost of doing business and it's not a burden. Mr. Welch did not agree and said the cost can be significant, depending on the size and number of trees. The replacement cost is \$420 per 2.5 inches of diameter which adds up quickly. In cases where replacement is not viable, such as lot size restrictions, or too much shade, a payment goes into the tree fund.

Ald. Hess-Mahan said he would like the term “being used as a residence” He noted that this language also coincides with the law about elections and implies the intent to stay. Perhaps saying “lived in and being used as a residence” would be a safer approach. He wanted to avoid as much as possible any other possible abuses of the ordinance.

Mr. Welch said they have looked all over the country at what other municipalities are doing to deal with these issues. Lexington was the first community to address this in Massachusetts and Newton was the second. Lexington restricts removal within buffer zones but do not control what happens in the setback. Wellesley and Brookline have similar guidelines but they are all dealing only within the envelope around the property and not wholesale lots. Locally, no one has as strong an ordinance as this proposed ordinance. It will result in more trees left on site and more trees planted.

Ald. Hess-Mahan pointed out that a statement of intent was crafted with the original tree ordinance and wondered if it wouldn't be a good idea to do that again. It was noted in the current ordinance that it is filed in the Clerk's office.

Ald. Leary moved to approve the ordinance as amended by Ald. Hess-Mahan to include "lived in and being used as a residence". Ald. Sangiolo asked that the amended language be submitted to the Committee as soon as possible and asked that the statement be provided and added, which could be presented on the floor of the Board. The Committee voted to approve as amended, unanimously. Please find a clean copy of the proposed ordinance attached.

#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 packaging, blunt wrappers and roll-your-own machines. [02/24/14 @ 4:53 PM]

ACTION: **A) APPROVED 5-2-0 RAISING THE MINIMUM AGE TO 21 (Hess-Mahan and Sangiolo opposed)**
B) APPROVED 7-0 ALL OTHER AMENDMENTS

NOTE: Commissioner Zaleznik joined the Committee. A draft ordinance was attached to the agenda for review. She pointed out that all e-cigarette products, whether they contain nicotine or not, would be covered under this ordinance as that was a question asked at the last discussion. Many of the devices are multi-use and nicotine products or non-nicotine products can be used in them so it seemed simpler to cover both. There had also been a question at the last meeting relative to a parent buying e-cigarette products for their child. It was incorporated in the current regulations that it would be allowed as state law does allow it.

Flavored Products

Ald. Hess-Mahan was concerned with limiting the availability of the flavored products. The FDA has not made any recommendations or rulings regarding these products. He is concerned with people who are trying to quit tobacco and are doing so by using e-cigarette products. He has heard that the flavoring is a main draw in using them as an alternative to tobacco. Commissioner Zaleznik pointed out that the flavored products will still be available in tobacco/e-

cigarettes stores. (There are currently two such establishments in Newton.) The regular and menthol flavored products will still be available in any retail establishment that currently sells tobacco. The concept behind making the flavored products more exclusive is to decrease the availability to those under the age of 21 as they are purposely marketed toward young people. A customer can only enter a tobacco/e-cigarette establishment if they are 21 or over and that is not the case in general retail establishments.

Raising the Age to 21

Commissioner Zaleznik explained that Brookline just passed approval through 2 of 3 necessary committees to raise the age to 21 and will be going to Town Meeting shortly.

Ald. Hess-Mahan was not persuaded that raising the age to 21 would prove effective. He would prefer mechanisms such as the smoke-free zone around the high schools as that has proven effective. The number of smokers has gone down consistently since 2002 from 16% to 6% among high school students according the Youth Risk Assessment Survey (attached). Alcohol is forbidden under the age of 21 yet 33% of high school students report drinking alcohol according to the same survey; marijuana is entirely illegal but still shows 17% of high schoolers using it. He believes making the products more expensive would be a bigger deterrent. Eighteen is the age of majority in the state of Massachusetts and he would not like to make exceptions to that in Newton. Twenty-one is the drinking age but that is statewide restriction.

Commissioner Zaleznik said the CDC numbers show the consistent decline in teenage smoking has been reversing since the introduction of e-cigarettes, not only for the e-cigarette products, but also for tobacco products. The products for e-cigarettes are unregulated, therefore, the equivalent amount of nicotine in a pack of cigarettes could be in one e-cigarette product. The addictive potential is extremely high and the price point is less expensive, even when mixing and matching the e-cigarettes with tobacco, which is what the data show kids are doing. According to the principals at both Newton high schools, they are seeing more use of e-cigarettes among students. The idea is to raise the age out of the high school environment.

Several Committee members said that studies show that if a child can be kept from using nicotine until the age of 21, they are much less likely to ever pick up the habit. They felt raising the age to 21 is an important piece of the ordinance and aging out of the high school milieu could be very effective. Raising the age also send a message about what the City of Newton's values are and what its goals are.

Commissioner Zaleznik distributed a list of communities that are raising the legal age above 18 and it is attached. Some communities are governing this through regulations and some through by-law, but because Newton already has such a robust tobacco ordinance, it seemed reasonable to go that route. Needham raised the age to 21 in 2005 and over the next 6 years, high school students who reported smoking in the last 6 months declined 50%. The rates in Newton have also been declining but she is concerned that they are going to rise again based on kids trying these new e-products.

Commissioner Zaleznik explained that the City would like to offer concrete smoking cessation programs to those who are interested, at the City's expense. This is meant to help those 18-20

year-olds who would no longer have legal access to tobacco and e-cigarette products. Grandfathering certain groups in is cumbersome and difficult so it was decided to make it a general age restriction and offer as much help as possible for those caught in between. Ald. Hess-Mahan said that recognizing that nicotine is addictive and in the effort to discourage smoking behavior, he did not want smokers to be treated disrespectfully and asked everyone to be mindful of that.

Small Retailers

There had been some comment in the past from convenience stores owners concerned about losing business. Committee members felt that the amount of business they would lose from cutting out the 18-20 year olds on these products would not constitute a significant loss. The flavored products are so new to the market that losing them could not make much of an impact. It was also pointed out that when tobacco products were banned from pharmacies, the sales very likely moved to the convenience stores.

Ald. Sangiolo asked the Committee to vote separately on A) raising the age; and B) all other proposed amendments. The Committee voted 5-2-0 to approve raising the age with Ald. Sangiolo and Hess-Mahan opposed; and 7-0 for all other amendments, therefore, the item was approved. Please find a clean copy of the proposed ordinance attached, as well as the draft Board Order.

REFERRED TO PROG & SERV, PUBLIC FACIL, AND FINANCE COMMITTEES

#127-14 COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of \$200,000 from the Community Preservation Fund to the Parks & Recreation Department for a final design and specifications to rehabilitate the Newton Highlands/Joseph Lee Playground between Winchester and Dedham Streets, as described by that department's November 2013 proposal and updated March 2014 funding request. [03/24/14 @ 3:10 PM]

ACTION: **PUBLIC FACILITIES APPROVED 5-0 ON 4/9/14**
APPROVED 4-0-3 (Hess-Mahan, Sangiolo and Blazar abstaining)

NOTE: The Committee joined the Public Facilities Committee to hear a presentation of this item. Please refer to the Public Facilities report of April 9, 2014 for details.

A short discussion took place when the Committee reconvened after the joint meeting. Ald. Hess-Mahan was concerned about the synthetic turf ordinance and that the project will comply with that and be enforced. Ald. Sangiolo was also concerned about the infill that would be used in the project and she wanted to be sure that it was a desirable product. Commissioner DeRubeis said he would not be using crumb rubber and is looking at alternatives. Both Ald. Hess-Mahan and Sangiolo explained that would abstain on this vote.

Ald. Rice moved to approve this item and the Committee voted in favor 4-0-3 with Ald. Blazar also abstaining.

Respectfully Submitted,
Amy Mah Sangiolo

<u>CURRENT</u>	<u>PROPOSED</u>
EXEMPT LOT CRITERIA	
At time of tree removal or At time of issuance of exterior work permit	At time of tree removal
<ul style="list-style-type: none"> • Must be occupied (no definition of occupied) • <i>No wait period required.</i> • <i>No requirement to be occupied once trees are removed.</i> • Must be owned by the same person for 12 months from date of certificate of exemption, if certificate was filed as part of exterior construction. 	<ul style="list-style-type: none"> • Must be occupied (<u>as defined below</u>). • At time of tree removal must be owned by the same person for 90 days leading up to removal . • The existing home must remain as a dwelling with person(s) living in it for 18 consecutive months following date of tree removal. • Must be owned by the same person for 18 consecutive months following date of tree removal.
OCCUPIED LOT CRITERIA	
NO DEFINITION or CRITERIA <i>**making enforcement nearly impossible**</i>	At time of tree removal
	<ul style="list-style-type: none"> • Lot must have legally constructed dwelling. • Dwelling must be a permanent structure. • Dwelling must be used primarily as a residence. • Dwelling is legally being lived in. • Must have legally permitted and functioning water, sanitary sewer, and electrical service.
OTHER KEY CHANGES	
<ul style="list-style-type: none"> • Burden of proof of occupancy will be on the property owner. Tree Warden may require proof to prove that dwelling is being lived in. Tree Warden determines criteria of appropriate proof. • Residential properties (4 or less families) meeting Occupied Lot and Exempt Lot criteria are exempt as they are under current ordinance. The primary difference is strong language and clear criteria that must be met that makes enforcement possible, deters scofflaws, and puts in place clear steps to insure compliance. • If existing dwelling (whose ownership has not changed for at least 90 days) is vacated or will be vacated, due to renovations, the property will no longer qualify as exempt. The property owner will be required to file an application for tree permit. The property owner may request a waiver of the tree replacement requirements by making a request in writing to the Tree Warden. To be granted this waiver the property owner must own the property for 18 consecutive months following the date it becomes legally occupied and the property must be continuously occupied during the same 18 consecutive months. • If an Exempt Lot is sold within 18 months following tree removal the new property owner must file for a Tree Permit and must comply with replacement requirements. • If a lot that has been granted a replacement waiver is sold or becomes un-occupied during the 18 months following occupancy the person issued the waiver will be responsible to replace trees lost. 	

At time of tree removal
or
At time of issuance of exterior work permit

- Must be occupied (no definition of occupied)
- *No wait period required.*
- *No requirement to be occupied once trees are removed.*
- Must be owned by the same person for 12 months from date of certificate of exemption, if certificate was filed as part of exterior construction.

At time of tree removal

- Must be occupied (as defined below).
- At time of tree removal must be owned by the same person for 90 days leading up to removal .
- The existing home must remain as a dwelling with person(s) living in it for 18 consecutive months following date of tree removal.
- Must be owned by the same person for 18 consecutive months following date of tree removal.

NO DEFINITION or CRITERIA
making enforcement nearly impossible

At time of tree removal

- Lot must have legally constructed dwelling.
- Dwelling must be a permanent structure.
- Dwelling must be used primarily as a residence.
- Dwelling is legally being lived in.
- Must have legally permitted and functioning water, sanitary sewer, and electrical service.

- OTHER KEY CHANGES**
- Burden of proof of occupancy will be on the property owner. Tree Warden may require proof to prove that dwelling is being lived in. Tree Warden determines criteria of appropriate proof.
 - Residential properties (4 or less families) meeting Occupied Lot and Exempt Lot criteria are exempt as they are under current ordinance. The primary difference is strong language and clear criteria that must be met that makes enforcement possible, deters scofflaws, and puts in place clear steps to insure compliance.
 - If existing dwelling (whose ownership has not changed for at least 90 days) is vacated or will be vacated, due to renovations, the property will no longer qualify as exempt. The property owner will be required to file an application for tree permit. The property owner may request a waiver of the tree replacement requirements by making a request in writing to the Tree Warden. To be granted this waiver the property owner must own the property for 18 consecutive months following the date it becomes legally occupied and the property must be continuously occupied during the same 18 consecutive months.
 - If an Exempt Lot is sold within 18 months following tree removal the new property owner must file for a Tree Permit and must comply with replacement requirements.
 - If a lot that has been granted a replacement waiver is sold or becomes un-occupied during the 18 months following occupancy the person issued the waiver will be responsible to replace trees lost.

DIVISION 3. TREE PRESERVATION

Sec. 21-80 Findings, intent, and purpose.

The board of aldermen has determined that many valuable trees are being lost without replacement incident to demolition of existing buildings in order to construct new buildings and lot clearing in connection with the construction of new buildings on previously undeveloped land. The Board has further determined that trees have been lost, severely damaged or disfigured through excessive or improper pruning or other than natural causes. The result is a net loss of the tree population in the city. The board has further determined that the city has insufficient legal vehicles to assure that such development adequately preserves, protects and provides for replacement of trees.

Therefore, the board of aldermen deems it necessary and desirable in the interest of public health, safety and welfare to enact an ordinance for the preservation and replacement of trees while allowing for reasonable improvement of land within the city. It is the public policy of the city to add to the tree population within the city, where possible, and to maintain, to the greatest extent possible, existing trees within the city while allowing for reasonable development of land within the city. The planting of additional trees and the preservation of existing trees in the city is intended to accomplish, where possible, the following objectives:

- (a) To preserve trees as an important public resource enhancing the quality of life and the general welfare of the city and enhancing its unique character and physical, historical, and aesthetic environment;
- (b) To preserve the essential character of those areas throughout the city which are heavily wooded and in a more natural state;
- (c) To enhance and preserve the air quality of the city through the filtering effect of trees on air pollutants;
- (d) To reduce noise within the city through the baffle and barrier effect of trees on the spread of noise;
- (e) To reduce topsoil erosion through the soil retention effect of tree roots;
- (f) To reduce energy consumption through the wind break and shade effects of trees when they are properly placed;
- (g) To preserve and enhance nesting areas for birds and other wildlife which in turn assist control of insects;
- (h) To reduce storm water runoff and the costs associated therewith and replenish ground water supplies;
- (i) To protect and increase property values;

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(j) To protect and enhance the visual quality of the city.

Sec. 21-81. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aggregate diameter: The combined diameter of a multiple trunk tree measured at breast height.

Building: The term "building" shall be as defined in section 30-1.

Certified arborist: An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.

Diameter breast height (DBH): The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

Drip line: A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Exempt lot: A lot which meets all of the following criteria:

1. The lot is occupied and used primarily as a dwelling for up to four families at the time any protected tree(s) are removed.
2. The lot owner at the time of protected tree removal has owned the lot continuously for a minimum of ninety (90) days prior to the removal of any protected tree(s).
3. The existing structure on the lot must remain occupied as a dwelling with a person or persons living in it for eighteen consecutive months from the date any protected tree(s) are removed.
4. The lot must be owned by the same person for eighteen consecutive months from the date any protected tree(s) are removed.

Exterior work permit: A permit or approval which is required in order to perform work on a vacant lot or to the exterior of a building on a lot, including, but not limited to the following: a building permit; a review of an alteration of contour of land if required pursuant to section 30-5(c)(1); curb cut and street opening permits; an order of conditions; certificates of appropriateness, nonapplicability, or hardship; a demolition permit pursuant to section 22-44; site plan approval pursuant to section 30-23; subdivision approval; a special permit pursuant to section 30-24; a comprehensive permit.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a protected tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Newton.

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Protected tree: Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land subject to the provisions of section 20-32.

Pruning standards: Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.

Remove (including removing and removal): The cutting down of any protected tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a protected tree, including, but not limited to, excessive or improper pruning.

Tree Manual: The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)

Tree Warden: The commissioner of parks and recreation or his designee. (Rev. Ord. 2007, § 20-31)

Sec. 21-82. Applicability, permit or certificate of exemption required.

(a) *Applicability:* The terms and provisions of this article shall apply to any protected tree located on land within the city not owned by the city, the commonwealth, or any independent authority of the commonwealth, or by the federal government except protected tree(s) located on an exempt lot pursuant to paragraphs (c) and (d) below.

(b) *Permit, certificate of exemption:* No person shall remove a protected tree on a non-exempt lot located on land subject to the provisions of this article, or commence legally permitted exterior work on any lot without first obtaining a tree permit or a certificate of exemption from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(c) *Exempt lot, certificate of exemption:* The owner of an exempt lot shall not be required to apply for a tree permit, provided however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on form(s) provided by the tree warden, that as of the date on the form(s) the lot qualifies as an exempt lot and will remain an exempt lot for eighteen months following tree removal. There shall be no fee for filing a certificate of exemption.

(1) The tree warden shall determine whether a property is an occupied lot for the purposes of establishing exempt lot status. The property owner shall, if requested by the tree warden provide proof of ownership as well as a written statement confirming ownership and that a person or persons are living in the property.

(2) If lot ownership changes during the eighteen consecutive months following the removal of any protected tree(s) on an exempt lot, the new owner must apply for a tree permit and shall be required to replace any protected tree(s) that were removed. If, However, a change of ownership occurs on a lot for which an extension of exempt lot status for non-occupancy during construction has been issued within the eighteen months prior to the change in ownership, the person issued such extension shall apply for a tree permit and shall be required to replace any protected tree(s) that were removed.

(d) *Extension of exempted lot status:* If at any point during the eighteen consecutive months following the removal of any protected tree(s) the property is no longer an occupied lot, the current owner of the lot must apply for a tree permit. If the non-occupancy is due to legally permitted construction, the tree warden may grant an extension of exempt lot status for the duration of the construction, provided:

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- (1) The owner intends to own the lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued; and
- (2) The property remains an occupied lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued.
- (3) If requested the tree warden may waive the ninety (90) day pre-ownership requirement. The tree warden may require that the owner receiving this waiver own the lot for an additional ninety (90) days following the required eighteen months. The lot must be occupied for the same ninety (90) days in addition to the required eighteen months.
- (4) If at any time the above requirements are not met, the tree warden shall revoke the tree permit and exempt lot status extension. The person issued the extension shall file a new tree permit application and shall replace any protected tree(s) that were removed.
- (5) Any person issued an extension of exempt lot status must report to the tree warden any change of ownership and any change of occupancy status within fifteen (15) days of the change if that change takes place during the eighteen (18) months following the date the certificate of occupancy issued.

Sec. 21-83. Permit application.

(a) *Contents, fee:* An application for a tree permit shall be submitted to the tree warden. The application for a tree permit shall be accompanied by a fee in the amount of one hundred fifty dollars (\$150.00) and shall include, but not be limited to, the following:

- (1) The shape and dimensions of the parcel of real property to be developed, together with the existing and proposed locations of structures and improvements, if any;
- (2) A tree plan showing the location, type and size of each protected tree indicating which protected tree(s) are to be removed, and the location, type and size of replacement trees;
- (3) The proposed relocation of any existing protected tree with a statement prepared by a certified arborist explaining how each such protected tree is to be relocated and maintained;
- (4) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
- (5) Any proposed grade changes which might adversely affect or endanger any protected tree with a statement prepared by a certified arborist explaining how each such protected tree shall be protected and maintained;
- (6) The proposed method of protecting the remaining protected trees during the course of the construction.

(b) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article. The tree warden shall date stamp or otherwise record the date of filing of each application for a tree permit. The tree warden shall complete the review of each tree permit application no later than ten (10) business days after the submission of a completed application to the tree warden and shall report to

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the commissioner of inspectional services within ten (10) business days of a request with respect to any tree permit application submitted in connection with a building permit as to whether said tree permit has been granted or denied. If no such report is received by the commissioner within the above-stated time period, he shall accept an application for a building permit without receipt of such report.

(c) *Standards for grant or denial:* No tree permit shall be issued unless one of the following conditions exists:

- (1) The protected tree will be relocated or replaced on site.
- (2) The protected tree will be replaced by payment in lieu of planting replacement trees as outlined in section 21-86.
- (3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements
- (4) The protected tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon rights-of-way, or poses a threat to pedestrian or vehicular safety.
- (5) The removal of the protected tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the tree warden by a certified arborist.
- (6) No protected tree(s) are to be removed from the site and appropriate tree protection measures will be in place where necessary as determined by the tree warden.

(d) *Conditions:* Upon the issuance of a tree permit, the tree warden may prescribe in writing such protective measures for existing protected trees as he deems necessary. Before site disturbance may begin, the tree warden may make a determination that the prescribed protective measures have been adequately provided.

(e) *Construction:* Except as provided in a tree permit, construction activities under the drip line of a protected tree are prohibited. Activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.

(f) *Suspension or revocation:* A tree permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this article or the conditions of the permit. The written notice shall be sent by certified or registered mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree permit upon compliance, where practicable. The suspension or revocation of a tree permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance (granting) of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(g) *Appeal:* Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date

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of receipt of the appeal. The mayor or his designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman for the ward in which the trees are located. There shall be no further appeal of the matter decided by the mayor or his designee. No protected trees shall be removed while an appeal is pending. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06; Rev. Ord. 2007, § 20-33)

Sec. 21-84. Activities not requiring a permit.

(a) *Pruning:* A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with approved pruning standards is required, and failure to meet these standards is a violation of this article. The tree warden shall maintain on file at all times a copy of the current edition the Tree Manual and shall make copies of the Tree Manual available for the cost of reproduction upon request.

(b) *Emergencies:* If any protected tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the tree warden to remove such tree, utilizing such professional criteria and technical assistance as he deems necessary, and the protected tree may be removed without obtaining a written permit as otherwise required by this article. The tree warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.

(c) *Waiver:* The requirements of this article may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-34)

Sec. 21-85. Tree replacement.

(a) *Required:* A protected tree shall be replaced in the manner provided in subsection (b) hereof in each instance in which a protected tree was removed from land subject to the provisions of section 21-82 without a tree permit.

(b) *Standards:* A person who has removed a protected tree and is required to replace such tree pursuant to subsection (a) hereof or as a condition of granting a tree permit in accordance with section 21-83 , shall replace such tree within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the tree permit is issued and in accordance with the following standards:

- (1) A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden in accordance with the Tree Manual and shall have the same or equivalent size as measured in DBH inches as that of the protected tree that has been removed.
- (2) In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the tree warden, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed. The tree warden may specify that replacement trees be of a minimum caliper when consistent with current accepted practice as stated in the Tree Manual.
- (3) A replacement tree shall be required to survive for a minimum of one eighteen (18) months from the date it is planted. The person planting the tree shall provide documentation as to the date of planting and file the same with the tree warden within fifteen (15) days of the planting of said replacement tree.

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- (4) A replacement tree shall be planted on the same lot from which the tree was removed.. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-35)

Sec. 21-86. Tree replacement fund.

(a) *Established:* There is hereby established a tree replacement fund which shall be held in a separate identifiable account and administered in accordance with applicable provisions of the General Laws. Any payments into the tree replacement fund required by this article shall be deposited in the tree replacement fund and shall be used in accordance with subsection (c) hereof.

(b) *Payment in lieu of planting replacement tree(s):* In lieu of planting a replacement tree as provided in section 21-85, a person who has been granted a tree permit may make a contribution to a tree replacement fund in an amount equal to the cost to replace the tree in accordance with the provisions of section 21-85, which cost shall be determined by the tree warden based on the City's current cost to purchase and install trees.

(c) *Maintenance of tree replacement fund:* The tree replacement fund shall be maintained in a separate account in accordance with state law. All sums deposited into such fund shall be used solely for the purpose of buying, planting and maintaining trees in the city. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-36)

Sec. 21-87 Rule and regulations. The tree warden is authorized to promulgate reasonable rules and regulations to implement administration of sections 21-80 through 21-90.

Sec. 21-88. Enforcement.

(a) *Notice of violation:* Any person who violates any of the provisions of this article shall be notified by the tree warden of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The tree warden shall send notice of violation of section 21-86), which notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the "per day" violation fine, as provided in section 21-89.

(b) *Stop work order:*

- (1) Upon notice from the tree warden that work on any protected tree, or lot on which a protected tree is located, is being performed contrary to the provisions of this article, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.
- (2) The tree warden is also authorized to request the agency which has granted an exterior work permit to order, to the extent permissible by law, that the owner cease any activity pursuant to the exterior work permit that might affect such protected tree while a stop work order is pending.
- (3) Any person who shall continue any work in or about the protected tree or lot on which a protected tree is located after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than three hundred dollars (\$300.00) for each such violation. Each day during which a violation exists shall constitute a separate offense.

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(c) *Injunctive relief:*

- (1) Whenever there exists reasonable cause to believe that a person is violating this article or any standards adopted pursuant to this article or any term, condition or provision of an approved tree permit, the city may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- (2) Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this article. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-37)

Sec. 21-89. Penalties.

(a) *Removal without a permit:* Each instance in which a protected tree is removed without a permit shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00).

(b) *Failure to replace trees or make payment:* Each failure to replace a tree or make a payment into the tree replacement fund shall constitute a separate violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(c) *Failure to comply with a condition contained in a tree permit or stop work order:* Each instance where there is a failure to comply with a condition contained in a tree permit or stop work order shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(d) *City trees:* Nothing herein shall be construed to require the city to make a payment into the tree replacement fund for any tree(s) which it removes. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-38)

Sec. 21-90. Severability, effect on other laws.

(a) *Severability:* The provisions of this article are severable. If any section, provision, or portion of this article is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this article shall continue to be valid.

(b) *Conflict of laws:* This article shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special permit procedures as provided in section 30-24 and to the extent that any provision hereof conflicts with said special permit procedures, such provision shall not be valid. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-39)

SUMMARY OF FINDINGS

Results From the 2012-2013 Newton Youth Risk Behavior Survey

What type of issues do Newton youth face? How have these issues changed over time? Are they the same as in other similar places? In an attempt to address such questions, the Newton Public Schools and the Newton Department of Health and Human Services conducted the 2012-2013 Newton Youth Risk Behavior Survey in November 2012 with students in grades six through 12. Similar surveys have been conducted every other year in Newton for over a decade. The results are expected to help Newton community leaders and agencies plan and evaluate their policies and programming while developing and enhancing effective ways to support young people. The information can also help parents understand challenges that their children face and encourage them to work in planning prevention and response strategies.

Largely based on the Centers for Disease Control and Prevention's *Youth Risk Behavior Survey*, questions on the anonymous and confidential survey focused on issues such as substance use, violence and safety, and physical and mental health. The high school survey (grades 9-12) was adapted for use with middle school students (grades 7 and 8) by omitting or modifying certain questions to facilitate completion by younger students. Due to differences in the survey used with 6th graders, the middle school results reported in this summary are limited only to grades 7 and 8.

Survey organizers caution that the results can present a skewed picture of Newton students because most of the data concern risky behaviors such as substance use and violence. It is important to emphasize the many positive aspects of adolescent life, the fact that these issues are not confined solely to youth, and that they are community issues that require the attention of all community members and organizations. Selected findings are summarized below.

Substance Use

- **Tobacco:** Less than 1% of 7th and 8th graders (referred to as middle school students in this summary) and 6% of high school students reported that they smoked cigarettes in the 30 days prior to the survey (current use), peaking at 10% among 12th graders. Newton has made considerable progress in addressing smoking among youth. Rates of current cigarette use among Newton youth have decreased since 2002 – from 3% in 2002, to 2% in 2004, 2% in 2006, 1% in 2008, 1% in 2010, and <1% in 2012 among middle school students and from 16% to 14% to 12% to 13% to 7% to 6% among high school students. Additionally, current cigarette use among Newton high school students (6%) is lower than the Massachusetts state average of 14% (Massachusetts data from the spring 2011 *Massachusetts Youth Risk Behavior Survey of High School Students*).
- **Alcohol:** Alcohol is the most popular substance among Newton youth, with 2% of middle school students and one-third (33%) of high school students reporting drinking alcohol in the 30 days prior to the survey. 18% of high school students reported binge drinking – having five or more drinks in a row – in this same timeframe, meaning that just over half (55%) of current high school drinkers engaged in binge drinking. While there were slight increases in current alcohol use among Newton high school students between 2010 and 2012, long-term trends are promising, with a decrease in current alcohol use since 2002 among both middle (9% in 2002, 7%, 6%, 4%, 3%, 2% in 2012) and high school students (44%, 41%, 38%, 37%, 31%, 33%), and similar decreases in binge drinking among high school students (27%, 23%, 23%, 19%, 17%, 18%). Current alcohol use among Newton high school students (33%) is below the state average of 40%, as is the rate of binge drinking (18% Newton, 22% MA).
- **Marijuana:** Marijuana use is far more common than any other illegal drug use, with <1% of middle school students and 17% of high schoolers reporting that they used marijuana in the 30 days prior to the survey. In fact, current marijuana use was more common among students than cigarette use (for example, 28% of 12th graders reported current use of marijuana compared to 10% for cigarettes). Use increases rapidly by age, from <1% in 7th grade to 5% by 9th grade and 28% by 12th grade. The rate of current marijuana use among Newton high school students decreased from 19% in 2010 to 17% in 2012. In contrast to decreases observed in use of other common substances like alcohol and cigarettes over the past decade, current marijuana use among Newton high school students had remained largely consistent since 2002; however, the 2012 rate of 17% represents a continued decline since 2008 (23% in 2002, 23%, 20%, 23%, 19%, 17% in 2012). The Newton 2012 rate of 17% is below the MA 2011 high school rate of 28%. The rate among middle school students remains low (3% in 2002, <1%, 1%, 1%, <1%, <1% in 2012).
- **Other Drugs:** Use of illegal drugs other than marijuana is much less common, with less than 1% of Newton high school students reporting current use of substances such as cocaine (<1%), ecstasy (<1%), heroin (<1%), methamphetamines (<1%), steroids (<1%), and Oxycontin (<1%). Two percent (2%) of high school students reported the current use of any

other illegal drug, a category that included substances such as LSD, PCP, mushrooms, Ketamine (Special K), Rohypnol (Roofies), GHB, and Oxycontin. The Newton survey included additional items concerning the use of other people's prescription medication and over-the-counter medications to get high, and the use of "study drugs" (like Adderall, Ritalin, or Dexedrine) to stay awake. 3% of Newton high school students reported that they had used someone else's prescription medication to get high during the 12 months prior to the survey, 2% used over-the-counter medications like cough syrup to get high, and 5% used "study drugs" to stay awake. Of note is the increase with age/grade in the use of "study drugs," rising from 2% among 9th graders, to 4% among 10th graders, 5% among 11th graders, and 9% among 12th graders, and a halt in decreases previously observed since 2004 in such use (7% in 2004, 5%, 4%, 3%, 5%).

Violence and Safety

- **Fighting:** Students in both middle and high school were twice as likely to report being in a physical fight (in the past 12 months) when they were *out* of school (12% middle school, 11% high school) than when they were *in* school (2% middle school, 4% high school). Overall, reported fighting has decreased since 2002 and Newton high school students reported a lower rate of fighting *in* school than Massachusetts students (4% Newton, 7% MA).
- **Being Bullied:** Newton middle school students (18%) were more likely than high school students (14%) to report that they had been bullied in school in the 30 days prior to the survey. In addition to being bullied in school, students were asked whether they had been bullied in other locations (on their way to/from school, when not in or on way to/from school, and on the internet). Rates of reported bullying in all venues decreased between 2010 and 2012, continuing an overall pattern of decline since 2002. For example, the percentage of Newton middle school students who reported being bullied in school in the 30 days prior to the survey has declined from 36% in 2002, to 41% in 2004, 30% in 2006, 29% in 2008, 21% in 2010, and 18% in 2012, while the high school rate has also declined (21%, 20%, 17%, 19%, 15%, 14%). Comparative Massachusetts statewide data are not available.
- **Observing and Responding to Bullying:** An item added to the Newton survey in 2010 asks respondents if they saw another student bullied in school in the 30 days prior to the survey. Newton middle school students (43%) were more likely than high school students (38%) to report seeing someone else bullied in school in the 30 days prior to the survey, and rates of observations declined between 2010 and 2012 (MS - 54% to 43%, HS - 42% to 38%). Other items added in 2010 focus on how students respond when they are bullied and when they see another student being bullied. Survey organizers were interested in whether students actively respond by trying to stop the bullying and/or telling a trusted adult about it. Of those students who reported that they had been bullied in school in the past 30 days, over half at both the middle school (52%) and high school (55%) levels reported trying to get the person/people doing it to stop. Fewer reported telling a teacher, counselor, or another adult at school (24% MS, 17% HS) and/or telling a parent or guardian (29% MS, 20% HS). Active witness bystander behavior was less common. Of those students who reported that they had seen another student bullied at school in the past 30 days, 50% of middle schoolers and 36% of high schoolers reported that they tried to get the person/people doing it to stop, while 11% of middle schoolers and 4% of high schoolers told a teacher, counselor, or another adult at school what happened. Students at both levels were most likely to report just watching it and not doing anything (45% MS, 62% HS) and, encouragingly, were least likely to report taking part in the bullying (2% MS, 2% HS). Trend data for bystander behavior are encouraging, with a decrease in the percent of students who took part in the bullying (MS - 3% to 2%, HS - 3% to 2%) or did nothing (MS - 55% to 45%, HS - 68% to 62%), and an increase in the percent who reported trying to stop the observed bullying (MS - 43% to 50%, HS - 29% to 36%) and/or reported it to a school adult (MS - 8% to 11%, HS - 4% to 4%).

Mental Health

- **Stress:** Roughly half of Newton middle school students (47%) and three-quarters of high school students (74%) described their lives as either *somewhat stressful* or *very stressful*, and these rates have remained largely consistent over time. Perceived stress increased with age/grade and peaked at 82% among 12th graders. Students generally reported worrying most often about *school* issues (47% MS, 70% HS), followed by *social* issues (23% MS, 41% HS), *appearance* issues (21% MS, 39% HS), and *family* issues (18% MS, 33% HS), with far fewer students worrying about *being bullied* (4% MS, 4% HS). While there has been an overall decrease in the percentage of students reporting worrying about these issues since 2002, there were some changes among high school students between 2010 and 2012, with increased concern about *school* (65% to 70%), *social* (40% to 41%), and *appearance* issues (31% to 39%), a decrease in concern over *family* issues (37% to 33%), and no change in concern about *being bullied* (4% and 4%).
- **Self-Harm and Depression:** 12% of 2012 Newton high school students reported that they had hurt themselves on purpose (e.g., by cutting or burning themselves intentionally) in the 12 months prior to the survey, while 18% reported experiencing depression (students were presented with a clinical definition of adolescent depression which asked if

they had felt “so sad or hopeless almost every day for two weeks or more in a row that [they] stopped doing some usual activities”), and 8% sought medical help for depression (well below the rate of reported depression). While rates have remained largely consistent since 2006, the percent of Newton high school students reporting each of these issues increased slightly between 2010 and 2012: self-harm (N/A in 2002, 15% in 2004, 11% in 2006, 12% in 2008, 10% in 2010, 12% in 2012), depression (24%, 22%, 18%, 18%, 16%, 18%), medical help for depression (10%, 9%, 8%, 8%, 6%, 8%). Available comparative data show that the Newton 2012 high school rate of reported depression (18%) remains below the 2011 Massachusetts 2011 rate of 25%, and available Newton data show comparatively lower rates among middle schoolers of self-harm (5%) and reported depression (7%) (middle school students were not asked about seeking medical help for depression).

- **Suicide:** The percentage of students who reported considering and attempting suicide in the 12 months prior to the survey are as follows: *seriously considered* (5% middle, 9% high), *actually attempted* (1% middle, 4% high). Similar to reported rates of self-harm and depression, rates of suicidal ideation and behavior among Newton high school students have been largely consistent since 2006 after prior declines, but increased slightly between 2010 and 2012: *seriously considered* (MS - 12% in 2002, 10% in 2004, 6% in 2006, 7% in 2008, 5% in 2010, 5% in 2012; HS - 14%, 11%, 8%, 9%, 7%, 9%), *actually attempted* (MS - 3%, 2%, 1%, 1%, <1%, 1%; HS - 6%, 4%, 3%, 3%, 2%, 4%) Rates of each of these behaviors among high school students are lower in Newton than in Massachusetts: *seriously considered* (9% Newton, 13% MA), *attempted* (4% Newton, 7% MA).
- **Support and Connections:** Students were asked if they had at least one adult in their school that they can talk to if they have a problem, and 66% of middle school students and 61% of high school students reported having such a trusted school adult confidant. These 2012 rates the highest rates observed since 2002. Notable among middle school students is that the rate of perceived school adult support had decreased since 2002 to its lowest level in 2008 and now has maintained at a much higher level in 2010 and 2012 (53% in 2002, 50%, 49%, 45%, 66%, 66% in 2012). Among high school students, the 2012 rate of 61% represents a continuation of increases observed since 2004 (50% in 2002, 47%, 50%, 53%, 57%, 61% in 2012).

The Newton survey also contained a set of five items from the National Longitudinal Survey that compose a "school connectedness" scale by assessing student perception of connectivity to their school and the teachers and other people associated with it. Mean connectedness scores range from a low of 1 (less attachment) to a high of 5 (more attachment). Average Newton school connectedness at both the middle and high school levels increased between 2010 and 2012, continuing a pattern of improvement since 2004 (MS - 3.69 in 2002, 3.63 in 2004, 3.62 in 2006, 3.77 in 2008, 3.95 in 2010, 4.02 in 2012; HS - 3.50, 3.49, 3.56, 3.64, 3.73, 3.77).

Sexual Behavior

- A total of 19% of Newton high school students reported that they had ever had sexual intercourse in their lifetime, increasing from 7% among 9th graders, to 11% among 10th graders, 24% among 11th graders, and 38% among 12th graders. While there had been little previous change between 2002 and 2008, the unchanged 2012 rate remains comparatively low (24% in 2002, 24%, 24%, 25%, 19%, 19% in 2012). A much smaller proportion of Newton (19%) than Massachusetts (42%) high school students reported ever having sexual intercourse and this difference is consistent across all grades (9th - 7% Newton, 28% MA; 10th - 11% Newton, 34% MA; 11th - 24% Newton, 50% MA; 12th - 38% Newton, 59% MA). Sexually active Newton students were also more likely than their Massachusetts peers to report using a condom during their last sexual experience (76% Newton, 58% MA).

Weight and Physical Activity

- Issues concerning weight control are particularly challenging among high school females. For example, Newton high school females (47%) were over twice as likely as males (22%) to report that they were actively trying to *lose* weight, even though more similar percentages of females (24%) and males (18%) described themselves as *overweight*. In their efforts to lose or maintain weight in the 30 days prior to the survey, 7% of females reported fasting, 4% vomited or took laxatives, and 2% took diet pills/powders/liquids.
- An item added to the 2010 Newton survey asked respondents on how many of the prior 7 days they had engaged in physical activity for at least 60 minutes. Approximately half (52%) of 2012 Newton middle school students and 39% of high school students reported engaging in 60 or more minutes of physical activity on at least 5 of the prior 7 days. Of note is the decline with age/grade in such activity between 7th and 12th grade (7th - 54%, 8th - 49%, 9th - 42%, 10th - 38%, 11th - 40%, 12th - 36%). The Newton high school percentage of 39% is similar to the 2010 rate of 40% and lower than the Massachusetts state average of 43%.

Municipal Tobacco Control Technical Assistance Program

Donald J. Wilson, Director
c/o Massachusetts Municipal Association
One Winthrop Square
Boston, Massachusetts 02110

(617) 426-7272
FAX (617) 695-1314
djwilson@mma.org

LOCAL POLICIES ON INCREASING THE MINIMUM AGE RE: TOBACCO

	<u>MUNICIPALITY</u>	<u>NEW AGE</u>	<u>EFFECTIVE DATE</u>	<u>POLICY TYPE</u>	<u>POPULATION</u>
1.	Needham	21	4/1/2005	health regulation	28,886
2.	Brookline	19	6/1/2013	bylaw: AG-approved	58,732
3.	Belmont	19	8/1/2012	health regulation	24,729
4.	Watertown	19	12/1/2012	health regulation	31,915
5.	Westwood	19	4/1/2013	health regulation	14,618
6.	Sharon	21	5/19/2013	health regulation	17,612
7.	Walpole	19	5/21/2013	health regulation	24,070
8.	Arlington	21	7/1/2015	health regulation	42,844
9.	Canton	21	1/1/2014	health regulation	21,561
10.	Ashland	21	1/1/2014	health regulation	16,593
11.	Sudbury	19	1/1/2014	health regulation	17,659
12.	Dedham	21	1/1/2014	health regulation	24,729
13.	Dover	21	1/4/2014	health regulation	5,589
14.	Wellesley	21	6/1/2014	health regulation	27,982
15.	Scituate	21	5/1/2014	health regulation	18,133
16.	Hudson	21	7/1/2014	health regulation	19,063
17.	Norwood	21	7/1/2014	health regulation	28,602
18.	Winchester	21	7/1/2014	health regulation	21,374
19.	Wakefield	21	7/1/2014	health regulation	24,932
20.	Reading	21	7/1/2014	health regulation	24,747
21.	NEWBURYPORT	19	7/1/2014	health regulation	17,416

Cities in Capital Letters

POPULATION TO 19: 189,139 (7)
POPULATION TO 21: 322,620 (14)
POPULATION TOTAL: 511,759

NATIONAL POLICY WITH AGE 19: AK, AL, UT, NJ and 3 counties in New York State

NATIONAL POLICY WITH AGE 21: New York City (effective date - mid-May 2014);
Big Island in Hawaii

4/7/14

A Technical Assistance Project for cities and towns funded through a Massachusetts Department of Public Health grant to the Massachusetts Municipal Association.

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 twenty-one (21); 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.

Distinguishable: Perceivable by either the sense of smell or taste.

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.

Minor: Any individual who is under the age of twenty-one (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) *Sale or gift to minors prohibited:*

(1) No person shall sell tobacco products or nicotine delivery products or permit the same to be sold to a minor, or not being the minor's parent or legal guardian, give tobacco products or nicotine delivery products 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 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. 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/or 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, other tobacco products, or nicotine delivery 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 displays:*

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

(g) *Ban on Free Distribution, 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 or nicotine delivery products prohibited:*

No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco or nicotine delivery product to a consumer. This provision shall not apply to a retail tobacco store or retail nicotine delivery product store.

(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 delivery product 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.

(m) *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 20-9—Sec. 20-12. Reserved.

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO.

April , 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 are hereby further amended with respect to **Article I** of **Chapter 20** follows:

1. Add to title of Art. I, after the words “Tobacco Products” the following language:

“, Nicotine Delivery Products”

2. Delete in the entire article where they appear the words and numeral “eighteen (18)”, and insert in place thereof the words and numeral “twenty-one (21).”
3. Add, in Sec. 20-1, the phrase “and Nicotine Delivery Products” to the end of the catchline; and add the phrase, “or nicotine delivery products” after the phrase “or other tobacco or smoking products,” where the latter phrase twice occurs.
4. Add, in Sec. 20-2 the phrase “and nicotine delivery products” to the end of the catchline.
5. Delete, in Sec. 20-2 (a), the last clause of the paragraph, and insert in its place the following language:

“; 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.”

6. Add, to Sec. 20-2 (b) the following definitions, in their alphabetical place:

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 fillers.

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.

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.

Distinguishable: Perceivable by either the sense of smell or taste.

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.

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 produce has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

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.

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 twenty-one (21) is prohibited at all times, and maintains valid tobacco and nicotine delivery product sales permit.

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.

AND

Add to the definition of *Self service displays*, after the words "tobacco products, the following language"

"or nicotine delivery products"

AND

Add to the end of the definition of *Vending machine*, the words "or nicotine delivery product."

7. Delete the catchline of Sec. 20-2 (c) and insert in place thereof the following catchline:

"(c) *Sale or gift to minors prohibited:*"

8. Delete Sec. 20-2 (c) (1) in its entirety and insert in its place the following language:

“(1) No person shall sell tobacco products or nicotine delivery products, or permit the same to be sold to a minor, or, not being the minor’s parent or legal guardian, give tobacco products or nicotine delivery products to a minor.”

9. Add, to the beginning of the catchline of Sec. 20-2 (c) (2) the following language:

“(2) *Required signage and*”

10. Number the current text of Sec. 20-2 (c) (2) as (c) (2) (a),

AND

Add the following subparagraphs:

(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 a 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.

11. Insert in the catchline of Sec. 20-2 (d), after the word “Tobacco” and before the word “sales”, the following language:

“and nicotine delivery product”

12. Insert, in the first sentence of Sec. 20-2 (d) (1), after the word “tobacco” where it first appears and before the word “within”, the following language:

“or nicotine delivery products”

AND

Insert, in the first sentence of Sec. 20-2(d) (1), after the word “tobacco” where it next appears and before the word “sales”, the following language:

“and nicotine delivery product”

AND

Insert, in the second sentence of Sec. 20-2(d) (1), after the word “tobacco”, and before the word “products”, the following language:

“and/or nicotine delivery”

13. Insert, in the first sentence of Sec. 20-2 (d) (2), after the word “tobacco” and before the word “sales”, the following language:

“and nicotine delivery product”

AND

Insert, in the second sentence of Sec. 20-2(d) (2), after the word “tobacco” where it first appears, and before the word “sales”, the following language:

“or nicotine delivery product”

AND

Insert, in the second sentence of Sec. 20-(d) (2), after the word “tobacco” where it next appears, and before the words “and this regulation”, the following language”

“to minors”

14. Insert, in Sec. 20-2(d) (3), after the words “Each applicant” and before the words “is required” the following language:

“selling or distributing tobacco”

AND

Insert, in Sec. 20-2 (d) (3), after the words “before a tobacco” and before the words “sales permit”, the following language”

“and nicotine delivery product”

15. Insert, in the first sentence of Sec. 20-2 (d) (4), after the word “tobacco” and before the word “sales”, the following language:

“and nicotine delivery product”

AND

Delete, in the second sentence of Sec. 20-2 (d) (4) the following language:

“no later than June 1”

16. Insert, in Sec. 20-2 (d) (5), after the word “tobacco”, the following language:

“and/or nicotine delivery products”

17. Insert, in Sec. 20-2 (d) (6), after the word “tobacco” and before the word “sales”, the following language:

“and nicotine delivery product”

18. Delete Sec. 20-2 (d) (7) in its entirety and insert in place thereof the following language:

“(7) No tobacco and nicotine delivery product sales permit holder shall allow any employee to sell cigarettes, other tobacco products, or nicotine delivery 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.”

19. Delete the first and second sentences of Sec. 20-2 (d) (8), and insert in place thereof the following language:

“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.”

20. Insert, in Sec. 20-2(d) (9), after the word “tobacco” and before the word “sales”, the following language:

“and nicotine delivery product”

21. Insert, in Sec. 20-2(d) (10), after the word “tobacco” and before the word “sales”, the following language”

“and nicotine delivery product”

22. Insert, in the catchline of Sec. 20-2(e), after the word “Tobacco” and before the word “products”, the following language:

“products or nicotine delivery”

AND

Insert, in Sec. 20-2 (e), after the word “tobacco” and before the word “products”, the following language:

“products or nicotine delivery”

23. Insert, in Sec. 20-2 (f), after the word “tobacco” and before the word “products” the following language:

“products or nicotine delivery”

24. Delete the catchline of Sec. 20-2 (g) in its entirety, and insert in its place the following language:

“(g) Ban on Free Distribution, on Single Cigarettes and on Non-residential roll-your-own Machines:”

AND

Insert, in the first sentence of Sec. 20-2(g), after the words “tobacco products”, the following language:

“or nicotine delivery products”

AND

Insert, at the end of the last sentence of Sec. 20-2(g), after the word “cigarettes”, the following language:

“or any non-residential roll-your-own machine.”

25. Insert, in the catchline of Sec. 20-2(h), after the words “Tobacco Products” the following language:

“or Nicotine Delivery Products”

AND

Insert, after the words “tobacco products” where they four times appear in the first and second sentences of Sec. 20-2(h), the following language:

“or nicotine delivery products”

26. Insert, in Sec. 20-2, the following new sections (i) through (k), and reletter Sec. 20-2 (i) and (j) to (l) and (m) respectively:

“(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 or nicotine delivery products prohibited:*

No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco or nicotine delivery product to a consumer. This provision shall not apply to a retail tobacco store or retail nicotine delivery product store.

(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.”

27. Insert, after the word “tobacco” where it appears in relettered Sec. 20-2 (1) (2) (b), (c), (d) and (f), the following language:

“and nicotine delivery product”

AND

Insert, in relettered Sec. 20-2 (1) (2) (e), after the words “tobacco product” the following language:

“or nicotine delivery product”

28. Insert, in each of the first two sentences of relettered Sec. 20-2 (1) (3), after the word “tobacco” and before the word “sales”, the following language”

“and nicotine delivery product”

AND

Insert, in the fourth sentence of relettered Sec. 20-2 (1) (3), after the word “products” and before the word “shall”, the following language:

“and nicotine delivery products”

AND

Insert, in the fourth sentence of relettered Sec. 20-2 (l) (3), after the words “revocation of the tobacco” and before the word “permit”, the following language:

“and nicotine delivery product sales”

29. Insert in the catchline of Sec. 20-6, after the word “tobacco”, the following language”

“or nicotine delivery”

30. Insert, in Sec. 20-6 (a) the following definition:

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.

AND

Insert, after the word “tobacco” as it each time appears in the both catchline and the definition of “*Tobacco product advertisement*”, the following language:

“or nicotine delivery”

31. Insert, after the word “tobacco” as it each time appears in Sec. 20-6 (b), the following language:

“or nicotine delivery product”

32. Insert, after Sec. 20-7, the following new section 20-8, and reserve Secs. 20-9 - 20-12:

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

The use of e-cigarettes as defined in Sec. 20-2(b) 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)