

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JUNE 4, 2014

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

Absent: Ald. Sangiolo

Also Present: Ald. Danberg, Harney, Schwartz and Yates

City Staff Present: David Olson (City Clerk), Dori Zaleznik (Chief Administrative Officer), Cindy Stone (Director, Historic Newton), Linda Walsh (Interim Commissioner, Health and Human Services), Theresa Kett (Public Health Program Specialist), Jenny O'Leary (Youth Services Director), Alice Ingerson (Community Preservation Manager), Karyn Dean (Committee Clerk)

Clerk's Note: Please see note on the next page for all the Youth Commission appointees.

Appointment by His Honor the Mayor

#172-14 ELIZA BETH, Woodcliff Road, Newton Highlands, appointed as a member of the YOUTH COMMISSION for a term to expire May 1, 2017 (60 days 7/18/14) [04/28/14 @ 4:33PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

Appointment by His Honor the Mayor

#173-14 ALEXA LYONS, Devonshire Road, Waban, appointed as a member of the YOUTH COMMISSION for a term to expire May 1, 2017 (60 days 7/18/14) [04/28/14 @ 4:33PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

Appointment by His Honor the Mayor

#174-14 ANTON MALIN, Howe Road, Newton Centre, appointed as a member of the YOUTH COMMISSION for a term to expire May 1, 2017 (60 days 7/18/14) [04/28/14 @ 4:33PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

Appointment by His Honor the Mayor

#175-14 JESSICA THARAUD, Watertown Street, appointed as a member of the YOUTH COMMISSION for a term to expire May 1, 2017 (60 days 7/18/14) [04/28/14 @ 4:33PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

Appointment by His Honor the Mayor

#176-14 JOHN KUSIAK, Ardmore Road, West Newton, appointed as a member of the YOUTH COMMISSION for a term to expire May 1, 2017 (60 days 7/18/14) [04/28/14 @ 4:33PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

Appointment by His Honor the Mayor

#177-14 MIRA LI, Fredana Road, Waban, appointed as a member of the YOUTH COMMISSION for a term to expire May 1, 2017 (60 days 7/18/14) [04/28/14 @ 4:33PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

Appointment by His Honor the Mayor

#178-14 SEUNGWAN KANG, Claflin Place, Newtonville, appointed as a member of the YOUTH COMMISSION for a term to expire May 1, 2017 (60 days 7/18/14) [04/28/14 @ 4:33PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: Ald. Rice welcomed all the Youth Commission appointees and asked them to join the Committee. Alexa Lyons, Mira Li and Seungwan Kang were unable to attend due to schoolwork responsibilities. The appointees introduced themselves and expressed their enthusiasm for joining the Youth Commission. They looked forward to representing the issues that seem to be at the forefront of the minds of their peers. Those issues include stress, inclusion, recognizing and accepting diversity, etc. Dori Zaleznik, Chief Administrative Officer, explained that this is the first time youth are being appointed as Commissioners with the power to vote on issues and have direct input into the process. She noted that they have brought substantial energy and a different point of view to events they have been involved with such as the Youth Summit. There is an advisory board to the Youth Commission of 20 people as well, with 15 adult members and 5 additional high schoolers. They hope that the 5 youth on the advisory board can sit in for Commissioners if there is a vacancy at any particular meeting.

Jennifer O'Leary, Youth Services Director, explained that the Youth Commission has been active for about 50 years but this is the first time students will be directly involved at this level. The Mayor was very interested in putting youth in a leadership position and some of the goals include unifying the youths in the City and addressing teen issues. The next meeting is to look at the goals and look at the current ordinance to see what is still relevant after 50 years.

Ald. Harney explained that he has been involved with the Youth Commission for the past two years and has just been appointed to the Advisory Board. He is very impressed with the work and enthusiasm the students bring to the issues of youth in the City and looks forward to working with them in the future. He invited aldermen to sit in on a Youth Commission meeting sometime to see the incredible work that is being done and thanked Ms. O'Leary for her wonderful work with the Youth Commission.

The Committee thanked the appointees and expressed how impressed they were with the students and how articulately they expressed their interests and hopes for the Commission. Ald.

Hess-Mahan moved approval and the Committee unanimously voted to approve all of the appointments.

Appointment by His Honor the Mayor

#179-14 BEN SIMON, Lake Avenue, appointed as a member of the FARM COMMISSION for a term to expire May 31, 2017. (60 days 7/18/14) [05/12/14 @ 4:41PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: Mr. Simon joined the Committee and explained that he has been planting vegetable gardens his whole life and started a landscaping business. Marcia Cooper from Green Decade told him of the opening on the Farm Commission and he started to attend meetings. He is interested in starting a farm and felt this would be a good way to serve his community and to learn. Ald. Leary asked if his company offers a leafblower-free option and he said they did, it just cost a bit more if the client chooses that option. He currently has 300 clients in Newton and the surrounding communities.

Ald. Blazar moved to approve Mr. Simon's appointment and the Committee voted in favor.

Re-appointment by His Honor the Mayor

#180-14 INDIRA DESAI, 14 Clements Road, Newton, re-appointed as a member of the ADVISORY COUNCIL OF HEALTH for a term to expire May 15, 2017. (60 days 7/18/14) [05/12/14 @ 4:41PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: The Committee voted in favor of this re-appointment.

Re-appointment by His Honor the Mayor

#181-14 LUCY CALDWELL-STAIR, Woodcliff Road, Newton Highlands, re-appointed as a Trustee of the JACKSON HOMESTEAD for a term to expire February 1, 2017. (60 days 7/18/14) [05/12/14 @ 4:41PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: The Committee voted in favor to approve this re-appointment.

Re-appointment by His Honor the Mayor

#182-14 MARIETTA MARCHITELLI, Waverley Avenue, Newton, re-appointed as a Trustee of the JACKSON HOMESTEAD for a term to expire February 1, 2017. (60 days 7/18/14) [05/12/14 @ 4:41PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: The Committee voted in favor to approve this re-appointment

Re-appointment by His Honor the Mayor

#183-14 RUSSEL FELDMAN, Langley Road, Newton Centre, re-appointed as a Trustee of the JACKSON HOMESTEAD for a term to expire February 1, 2017.
(60 days 7/18/14) [05/12/14 @ 4:41PM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: The Committee voted in favor to approve this re-appointment.

#184-14 NEWTON ELECTION COMMISSION requesting the Board of Aldermen approve a change of polling location for Ward 2, Precinct 2 from the Cabot School to Cabot Park Village at 280 Newtonville Avenue, Newtonville.
[05/12/14 @ 9:06AM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: David Olson, City Clerk, joined the Committee. He explained that the Election Commission has voted to move the polling location from the Cabot School as it will be taken out of operation when the new construction begins there in the near future. They have identified Cabot Park Village as an ideal spot for a polling location and the executive director there is in favor of using it as such. There is easy access into the building and it meets all the criteria for handicap accessibility. There is ample parking available as well. They will be able to store the election equipment on site which will be very helpful and the site allows for the voting machines to be plugged into a working phone jack to transmit the results to City Hall to be incorporated into the totals for the night. This makes the process much more efficient as there are no phone lines at some of the polling locations and the voting machines have to be transported back to City Hall to download the information. The voters will be notified through a mailing to each household and there will be sandwich boards and signs in the area as well on election day. The change will also be noted on the City's website and will be in effect for the upcoming elections in September.

Ald. Norton voted to approve this item and the Committee voted in favor to approve.

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#200-14 COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of two hundred eight thousand seven dollars (\$208,007) from the Community Preservation Fund's historic resources fund balance or reserve, to the control of the Jackson Homestead, for repair of tombs in the East Parish Burying ground (Centre & Cotton Streets), as detailed in the proposal submitted in November 2013 and revised in April 2014. [05/08/14 @ 11:01 AM]

ACTION: **APPROVED 6-0 (Ald. Baker not voting)**

NOTE: Cindy Stone, Director, Historic Newton and Jim Robertson, Vice Chairman of the Community Preservation Committee (CPC) joined the discussion. Mr. Robertson said these funds are dedicated to the East Parish Burying ground for restoration of tombs. The funding proposal and CPC recommendation were attached to the agenda. Ms. Stone said the project to restore the City's burying grounds began in 2003 and they have been working on it in stages. All of the gravestones have been restored but the tombs are still in need of repair. There are hundreds

of years of deferred maintenance to contend with on the three burying grounds in the City. The South and East burying grounds are now open to the public.

The Committee asked who was buried in the East parish burying ground and Ms. Stone said there is a full list on the Historic Newton website. Ald. Leary suggested doing some historic-related walks through the burying grounds and Ms. Stone said that is already happening.

It was asked if more money will be necessary for this project. Ms. Stone said they will have to come back for more money for the other burying grounds that still need work. Ald. Blazar asked if there was public bidding on this work. Ms. Stone said \$60K was left over from the last phase of this project and so they made a list of the tombs that still needed work and put it out for bid. The \$60K only covered a few of the tombs but it gave them an idea what was needed to finish the work. They used that information to determine what was needed for this phase of the project.

Ald. Hess-Mahan said this was excellent use of CPA funds and moved to approve this item. The Committee voted in favor and approved this item.

#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]
**ITEM RECOMMITTED TO PROGRAMS & SERVICES COMMITTEE on
APRIL 22, 2014**

Clerk's Note: President Lennon asked that this item be separated into 5 different categories for a vote. The Committee voted as follows:

ACTION:

A) to prohibit use of nicotine delivery products in places where use of tobacco products is prohibited

APPROVED 5-0-2 (Ald. Baker and Norton abstaining)

B) to regulate the sale of tobacco products and nicotine delivery products containing flavoring other than regular and menthol

APPROVED 5-0-1 (Ald. Baker and Norton abstaining)

C) to increase the minimum age for purchasing tobacco and nicotine delivery products to 21

APPROVED 6-1 (Ald. Hess-Mahan opposed)

D) to further regulate signage:

APPROVED 5-0-2 (Ald. Baker and Norton abstaining)

E) to regulate minimum cigar pricing and packaging, blunt wrappers and roll-your-own machines

APPROVED 5-0-2 (Ald. Baker and Norton abstaining)

NOTE: This item had been voted out of Committee and approved in two parts in April: raising the age to 21; and all other amendments. When it got to the full Board, President Lennon felt it was better to separate the five different sections of this item for individual votes. That discussion became complicated on the floor of the Board so was sent back to Committee.

Dori Zaleznik, Chief Administrative Officer addressed the Committee. She explained that although she is no longer the Commissioner of Health and Human Services, she felt strongly enough about this issue to continue to speak to it. Linda Walsh, the Interim Commissioner agrees with Ms. Zaleznik and supports this initiative. This item contains a coherent set of changes and additions to the tobacco ordinance and the City has been very forward-looking in relation to tobacco. The City is trying to promote no nicotine addiction for the next generation of youth and this whole set of amendments would further that goal. There is reasonable information that suggests that when the age of sale is increased the rate of smoking decreases; there is reasonable information that e-cigarette use is skyrocketing, particularly among kids and it is not a big leap to say that once hooked to nicotine by the e-cig products, kids will likely go to tobacco products because they are a less expensive option. The CDC has some data that suggests that is indeed happening.

There has been some interest that the FDA is taking up some aspects of e-cigarettes so a description of what the FDA timetable is likely to be was included in the packet. It is a long timetable and what the City is proposing would not be part of what the FDA is considering. There is some literature starting to come out about how safe the e-cig products and vaping are. Ms. Zaleznik said it reminds her of what was being said about the benefits of smoking in the 50s and 60s. There are other components in these products aside from nicotine and, in her opinion, there will be more data coming to show they are not as harmless as they are being promoted to be. Ms. Zaleznik said this industry is being regulated and promoted by the tobacco companies and some of the documents emailed to the Board are from these companies. These companies are making a fortune and will continue to make a fortune from kids unless someone steps in with some limits.

Please see attached the Draft Ordinance and an update letter from the Mass Municipal Association.

Committee Questions and Comments

Ald. Hess-Mahan said he would prefer that the Board of Health regulate this rather than passing an ordinance that might have to be changed later, but he is happy to move all the parts of this item for approval, even though he plans to vote against raising the age to 21. He said that Needham has raised the age and Newton has not, and there is the same degree of smoking in both communities.

Members of the Committee were supportive of the amendments. A few had received an email asking about a public hearing on this item. Ms. Zaleznik explained that a public hearing is not required but the Committee could, of course, take public comment again as it has done at its previous meetings. Committee members felt that having another meeting for further public comment would not likely produce any different points of view than what has already been heard. The emails have recently received asking for another meeting for public comment are from tobacco and retail organizations.

Ms. Zaleznik noted that Providence has led the way with some similar regulations and she spoke with people who spearheaded the initiative there. They reported that the points that were brought up most often in opposition included the things the Committee has heard already by people here in Newton: adverse effect on small businesses by sending customers to surrounding towns, however, Brookline just voted to go up to 21, Cambridge and Waltham are considering it, and Needham is already at 19, so Newton would not be an island in this. The flavoring has been discussed as a tool in smoking cessation but the flavored products could still be purchased at tobacco/e-cigarette stores. The regular and menthol flavors could still be purchased at any establishment that sold tobacco products. At the Committee's suggestions, they added that parents could purchase these products including flavored products for their children.

Ald. Schwartz said he has been working on this issue for 20 years and he has heard specious arguments over the years to prevent limiting regulations. There is always the fingerprint of the tobacco companies in these objections. In 1992 Philip Morris sponsored a tour of the US that promoted smoking is a "liberty" issue. Tobacco control advocates used this as an opportunity to point out it was not a liberty, but an addiction, and used the statue of liberty in chains as a device to demonstrate that. These amendments were recommended by the health department and its advisors as a comprehensive plan and as a way to approach the problem from as many different angles as possible to be successful. He recommended supporting all five of the amendments. As a practicing physician he deals with many kinds of addictions and people are always regretful and say they wish they had never started. If kids don't start smoking by age 19, it is far less likely that they ever will. Pushing the age to 21 gets this out of the high school community and gives it a higher chance of being successful.

Ald. Norton is supportive of the concept, but she heard compelling testimony from residents who attended the meetings that the flavorings help them quit smoking tobacco. She has concerns about the impact of small businesses being excluded from selling the flavored products as well, so she will be abstaining on all parts of the item except raising the age to 21. Ms. Zaleznik pointed out that the flavored products will still be available at the tobacco and e-cigarette stores and the regular and menthol products available everywhere else. There is a recent report that e-cigarettes were better for quitting tobacco than other products. This study has been called into question because it was short-term, self-reporting and contrary to many, many other studies, it found that quitting "cold-turkey" worked better than other methods such as patches. No other studies have found this and it calls the entire study into question.

Ald. Baker said he would abstain because he arrived so late to the conversation this evening. He will read the report and be able to vote at the full board meeting. He is, in general, sympathetic to the objective and would be disposed to vote for it.

Ald. Danberg noted that there was a recent study that showed use of nicotine has a very negative effect on bone grafting in dental procedures. The incidence of rejection is extremely high.

The Committee voted out each of the five parts and the votes are noted above. All parts of the item were approved.

Respectfully Submitted,

John Rice, Acting Chairman

Chapter 20

CIVIL FINES AND MISCELLANEOUS OFFENSES*

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

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

Sec. 20-1. Distribution of Tobacco Products and Nicotine Delivery Products.

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

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

Sec. 20-2. Sale of tobacco products and nicotine delivery products.

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

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

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

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

fillers.

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

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

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

City: City of Newton.

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

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

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

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.

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

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

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

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

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

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

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

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

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

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

(c) ~~Sales~~ 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 ~~18~~²¹ years old or older. Verification is required for any person under the age of 27.

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

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

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

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

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

- (5) A separate permit is required for each retail establishment selling tobacco and/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, ~~or~~ 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~~ Self-service displays:

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

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

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

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

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

(i) Cigar sales regulated:

No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more. This section shall not apply to the sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more; or to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Newton; or to a retail tobacco or retail nicotine delivery store.

(j) Sale of flavored tobacco 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 -salesdelivery 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.

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

Sec. 20-3 – 20-4. Reserved.

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

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

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

(1) any private parking lot and private way to which the public has access where prior consent has been obtained from the owner or authorized person in control thereof, and provided further that no disturbance or annoyance is created thereby;

(2) any public property specified in subsection (a) where prior express consent by way of a permit has been issued from the chief of police or his duly authorized agent in accordance with the provisions of section 17-5 of the Revised Ordinances; and provided further that no disturbance or annoyance is created thereby.

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

to such officer.

(d) All alcoholic beverages or intoxicating liquors being used in violation of this section shall be seized and safely stored until final adjudication of the charge against the person or persons affected, at which time they shall be returned to the person or persons entitled to lawful possession unless, as a result of said adjudication, such alcoholic beverages or intoxicating liquors are ordered confiscated or seized to be disposed of according to the General Laws or as the court directs.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Removal:

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

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

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

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

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

- (1) Upon the sidewalk at:

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

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

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

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

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

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

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

The use of e-cigarettes is prohibited wherever smoking is prohibited under M.G.L Chapter 270, Section 22 (the Smoke-Free Workplace Law²), and in all locations listed in Section 20-7 of this ordinance. The Commissioner of Health and Human services and/or his or her designee(s) shall enforce this section in accordance with Sec. 20-7(c)

Secs 20-89—Sec. 20-12. Reserved.

Municipal Tobacco Control Technical Assistance Program

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June 11, 2014

Newton Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

RE: STATEWIDE STATUS OF SELECT POLICIES
UNDER CONSIDERATION IN NEWTON

Dear Aldermen:

As the Tobacco Control Director at Massachusetts Municipal Association, under a Massachusetts Department of Public Health grant held by the MMA, I assist cities and towns with local tobacco policies. Below are select policies being entertained by the Board as amendments to your current tobacco city ordinances.

During the amendment process, a question arose as to whether the current rule-making proposals being entertained by the U.S. Food and Drug Administration on e-cigarettes and cigars would affect, or cover, the proposals below. I have added my opinion as to the likelihood that each policy will be included in an FDA rule, after having spoken to others more familiar than I with the FDA process. Also note, that current “bets” are that it will take at least two years for any of the FDA rules being entertained today, to be promulgated and go into effect.

1. CIGAR SALES REGULATED (§20-2(i))

54 municipalities (10 cities) require minimum pricing on cigars. Statewide youth surveys find that youth are using cheap, flavored single cigars more than cigarettes. Minimum pricing thwarts youth initiation to tobacco. A quarter of the state’s population lives in municipalities with this policy, including Boston. This policy does not affect premium cigars. Due to their price and lack of flavor options, they are not a type of tobacco product favored by youth. This policy is unlikely to be in the proposed FDA regulation.

2. PROHIBITION OF THE SALE OF BLUNT WRAPS (§20-2(k))

A blunt wrap is a sheet of reconstituted tobacco, usually flavored and used primarily to make marijuana cigarettes. 68 municipalities ban the sale of blunt wraps. Boston (since 2009), and 15 other cities, have banned them. The public health concern is that blunt wraps will be the product that leads youth to an addiction to tobacco. Police departments usually support this policy because of the product’s connection to drug use. The Massachusetts

Supreme Judicial Court sided with Boston when the city was sued by blunt wrap manufacturers. The federal government is prohibited from banning tobacco products so this will not be in the proposed FDA regulation.

3. BAN ON NON-RESIDENTIAL ROLL-YOUR-OWN MACHINES (§20-2(g))

87 municipalities (17 cities) ban roll-your-own (RYO) machines in commercial and/or private club locations (sale of RYO machines for in-home use is permitted). The deep discounted price of these RYO cigarettes undercut the long-held proven strategy that higher prices discourage smoking, especially among youth. Federal law bans commercial use of RYO except in private clubs. The proposed policy eliminates this loophole, making for a “level playing field” among all cigarette vendors in Newton.

4. RAISING MINIMUM LEGAL SALES AGE (MLSA) TO 21 (definition change)

22 municipalities (2 cities – Melrose and Malden) have raised the minimum legal sales age from 18 to 21. Needham was the first jurisdiction in the U.S. to do so in April 2005. There have been no lawsuits to date. New York City’s ordinance went into effect on May 28, 2014. Brookline voted at town meeting at the end of May to raise their MLSA from 19 to 21. The federal government is prohibited from raising the MLSA so it will not be in the proposed FDA regulation.

5. REQUIRING RETAILER TO POST CESSATION INFORMATION (§20-2(c)(2)(b))

61 cities and towns require retailers to also post a sign indicating the state’s toll-free Quitline information for smokers contemplating a quit attempt. Boston and ten other cities have this policy. The state provides free signage. No such signage requirement is in the current FDA regulation. It is unlikely it will be in the proposed one.

6. E-CIGARETTE USAGE – LOCATIONS PROHIBITED (§20-8)

56 municipalities ban the use of e-cigarettes in those smoke-free locations included in the state’s Smoke-Free Workplace Law (MGL Ch. 270 §22) and in those smoke-free locations found in their local second-hand smoke measures. Boston and 11 other cities have this policy. The public health rationale is that e-cigarettes are unregulated and therefore the exhaled vapor’s content is unknown, especially if the solution used is purchased on-line or is homemade. The federal government is prohibited from banning usage and therefore this policy will not be in the proposed FDA regulation.

7. FLAVORED PRODUCT BAN (WITH EXCEPTIONS) (§20-2(J))

In 2009, the federal government banned flavored cigarettes nationwide. Providence enacted a city ordinance, relying on the federal government’s public health rationale for the cigarette flavor ban, and extended that ban to include all other tobacco products and e-cigarettes, with an exception for certain retail outlets. Providence prevailed in a lawsuit in the U.S. Court of Appeals in the same district that serves Massachusetts. The towns of Sherborn and Yarmouth have enacted this policy. It is unclear if the FDA will include this policy in their proposed regulation.

Please feel free to contact me at the MMA if you have further questions.

Sincerely,

D.J. Wilson