

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, NOVEMBER 4, 2009

Present: Ald. Johnson (Chairman), Freedman (Vice Chairman), Baker, Brandel, Hess-Mahan, Merrill, Parker and Sangiolo

Also Present: Ald. Danberg

Others Present: Fran Towle (Commissioner, Parks & Recreation Dept.), Marc Welch (Director, Urban Forestry), Linda Walsh (Director, Clinical Services), D.J. Wilson, (Tobacco Control Director, Mass. Municipal Association), Scott Keyes (Director of Public Policy, American Lung Association), Dr. Alex White (Massachusetts Thoracic Society), Karyn Dean (Committee Clerk)

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#372-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend fifty five thousand dollars (\$55,000) from Marathon Receipts for the purpose of funding park improvements and repairs as follows: \$25,000 for the installation of playground equipment at the West Newton Common and Franklin School; and \$30,000 to replace Fibar ground covering and broken or unsafe playground equipment. [10/27/09 @ 3:10 PM]

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

NOTE: Commissioner Towle said that this is an annual request for maintenance work to playgrounds and parks throughout the City. This year, they will be using \$30,000 to replace Fibar ground covering and some unsafe or broken equipment. This does not cover any major equipment replacements, just basic upkeep. They will use \$25,000 as seed money to supplement community fundraising efforts to provide installation of playground equipment for West Newton Common and Franklin School. Ms. Towle noted that they have two certified equipment inspectors. They conduct inspections on a biannual basis and submit requests for repairs and replacements. A schedule of past allocations and locations is attached to this report.

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

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#373-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend thirty seven thousand five hundred forty three dollars (\$37,543) from Free Cash for the purpose of supplementing the tree maintenance budget. [10/27/09 @ 3:11 PM]

ACTION: **APPROVED 7-0 (Ald. Baker not voting)**

NOTE: Commissioner Towle explained that this request for funds was to replace the money that has been used for emergency tree or limb removal. These funds will also be used to remove the stumps left by removed trees.

New Wages for Tree Workers

Ms. Towle said that the city went out to bid for a new contract this fiscal year and found that the state has put in a new prevailing wage for tree workers. In FY09 the tree worker received approximately \$16/hour, but in FY10 the tree workers prevailing wage was bumped up to \$46/hour. This change increases their total budget by 82%. But on emergency work it doubles their budget. Last year they had \$48,000 in tree emergency work. They would need \$109,000 this year to accomplish the same amount of work. She said that they prune about 450 trees by request each year. This change in their budget would reduce the volume of work they could accomplish and would start having further ramifications as time went on.

Marc Welch explained that this new prevailing wage for tree workers still leaves them among the lowest paid workers. These costs could also include benefits so their actual wage is about \$25/hr. He reminded the Committee that tree workers do some of the most dangerous work in the City. The wage rate didn't necessarily rise but instead the workers were re-classified by the state. Mr. Welch said they were trying to have a conversation with the state about this and get a letter of determination. Ald. Parker asked if the City could contract the work out to landscaping companies. Mr. Welch said they could not do that and as soon as somebody did that work, they would be classified as a tree worker. Under state law, a municipality must pay the prevailing wage.

Ald. Freedman asked if there was a different way to accomplish this tree work. Mr. Welch said they might try to do some work in-house but that would require hiring personnel and purchasing equipment. There was currently no city forestry staff. Ald. Johnson asked if the City had the ability to bill the utility companies for tree work around their wires. Mr. Welch said he could check with the Law Department but felt it was unlikely. He explained that the utilities have protections under state law.

Ald. Hess-Mahan moved approval of this item and the Committee voted in favor.

#232-09 ALD. HESS-MAHAN, DANBERG AND FREEDMAN requesting an amendment to the City of Newton Ordinances to ban the sale of tobacco products at pharmacies in Newton. [07/16/09 @ 9:42 AM]

ACTION: APPROVED 4-1-1 (Ald. Brandel opposed; Ald. Johnson abstaining; Ald. Parker and Sangiolo not voting)

NOTE: Ald. Hess-Mahan provided the language that would be amended and inserted. It is attached to this report. In summary, it inserts a definition of "health care provider" (which includes pharmacies) and then prohibits the sale of tobacco products by health care providers. This is the language that the current communities (Boston, Needham and Uxbridge) with this ban use. Ald. Hess-Mahan noted that these communities have

adjusted well to this ban and there have been no problems or complaint. He urged his colleagues to be among the leaders in implementing this ban.

Sales to Minors

Ald. Parker said he looked at the Campaign for Tobacco Free Kids which, he believed, was the biggest anti-tobacco organization in the country. He said he could not find excluding pharmacies as vendors as one of their initiatives. He said that the City had restrictions on tobacco sales in Newton through licensing and penalties for sale to minors. He wondered if pharmacies sold to minors more than other businesses. Ald. Hess-Mahan said this was not an effort solely to limit sale of tobacco products to minors. It was an effort to eliminate the sale of tobacco products in health care institutions. The sale of health products and medications alongside the sale of products known and proven to cause devastating health problems was sending the wrong message. There has also been a huge loss in tobacco control funds so monitoring sales to minors has been vastly reduced. Ald. Johnson said this ban would not necessarily stop sale to minors. She knows that it has happened in convenience stores close to schools.

Limiting Ban to Pharmacies

Ald. Parker wondered why pharmacies would be singled out. Would pharmacies be a more tempting place to buy cigarettes than any other type of establishment? Mr. Wilson said that this primarily limits the number of places where tobacco can be purchased. And in particular, the ban removes a product that is highly dangerous to health from establishments that provide health services. Ald. Parker would like to see a ban of tobacco products completely. Dr. White said that was an unlikely outcome so they would like to start with health care facilities. Ald. Johnson said there are other products in pharmacies that are harmful to health including candy and snack foods. She felt singling out pharmacies was discriminatory. Ald. Brandel agreed and thought this ban would have no impact on anyone's health in Newton. Ald. Hess-Mahan said candy could contribute to a health problem, but tobacco was a known cause of very serious illness and death. He noted that pharmacies were licensed to sell medications and there was no other place to get prescription drugs. As a licensed health care provider, he felt they had a responsibility to refrain from selling such a dangerous product. Ald. Danberg agreed.

Ald. Freedman said the argument that there were many things that were bad for people was not a good argument for refraining from changing one of them. He said this product was uniquely harmful when used in *any* amount. In the near future, this will be legislation that is widespread and considered common sense.

Ald. Merrill noted that banning smoking in restaurants had little or not effect on their business. In fact, there was an argument that perhaps business has gone up since more people felt comfortable in a smoke-free environment. He supported this proposed ban as he has experienced ill effects from smoking firsthand.

Response from Pharmacies

Mr. Wilson pointed out that CVS and Walgreen's have not shown up for any of these discussions in Newton, Needham or Boston. He feels that they are seeing the inevitability of this ban and are not making any effort to fight it. All of the pharmacies in Newton were noticed on this meeting and no representatives attending the meeting. Ald. Hess-Mahan noted that in the 1970s, the American Pharmacists Association stated that pharmacies should not sell tobacco products.

Temporary Clinics

Ald. Sangiolo wondered if establishments, like supermarkets, that set up temporary clinics for blood pressure and flu shots for example, would be included. She also wondered if this should be represented in the language. The Committee discussed this and decided that temporary clinics need not be included. Ald. Hess-Mahan said he would have Marie Lawlor take a look at this to be sure. Supermarkets that have permanent pharmacies would be included. D.J. Wilson of the Massachusetts Municipal Association said that San Francisco ended up in court because they had many caveats in their legislation. He thought it best to use the language that was proposed.

New Tobacco Permits

Mr. Wilson spoke to the Boston Tobacco Control Director and she reported that there have been no complaints with the Boston ban. He asked her if she had seen an increase in tobacco sale permit requests since the ban went into place and there has been no difference. This has not spurred tobacconist's shops to open up and fill the gap.

Public Comment

Richard Hutchinson, 160 Lincoln Street. Mr. Hutchinson said he hated smoking but wondered if the economic impact of this ban on the business owner had been researched. He was concerned that removing this revenue generator might raise the prices of other items such as prescription medications. He felt mixed messages were everywhere, including candy and junk food, and to distinguish pharmacies and tobacco products was unfounded.

Scott Keyes, Public Policy Manager, American Lung Association of Massachusetts and a registered lobbyist in Massachusetts. Mr. Keyes said that tobacco was a different class of products than candy and snack foods. Tobacco is the only known substance sold in pharmacies that is known to kill. Its second-hand effects cause cancer in people around its users as well. Eating junk food can be a contributing factor to health related conditions, but tobacco products are known to cause ill health. He maintained that any other product known to cause 450,000 deaths around the U.S. a year would be banned from pharmacies without much problem. Mr. Keyes said that his research has shown that tobacco pharmacy sales typically make up less than 1% of total sales. Eighty-eight percent of independently owned pharmacies reported no loss or an increase in revenue after the ban. Mr. Keyes provided an article which is attached to this report.

Dr. Alex White, VP, Massachusetts Thoracic Society. Dr. White said that doctors rely on pharmacies to dispense the drugs they prescribe for tobacco related illnesses. The

membership of the Mass Thoracic Society overwhelmingly voted to ban the sale of tobacco in pharmacies in the state of Massachusetts. There is a bill on Beacon Hill that is moving ahead but in the meantime, they are trying to accomplish the ban city by city. He said the best hope is to stop children from starting to smoke. The American Thoracic Society is hoping to take this ban nationwide. Dr. White pointed out that 80% of the general population does not smoke, so he didn't think it was necessary to cater to 20% of the population and offer tobacco products in pharmacies.

#232-09(2) ALD. HESS-MAHAN requesting to update City of Newton Ordinances Chapter 20, Article 1. **Smoking, Tobacco Products and Alcoholic Beverages** to reflect changes in Massachusetts state law. [09/13/09 @ 1:07 PM]

ACTION: **APPROVED 6-0-2 (Ald. Parker and Sangiolo abstaining)**

NOTE: D.J. Wilson explained that he went through the Newton Ordinance and put in the language that would reflect changes in Massachusetts state law and maintain continuity with other communities. A red-lined version is attached to this report. The biggest change in the Newton ordinance was in the fines section to match up with state law. This would include increasing fines and lengths of suspensions with a period of revocation with the fourth offense. Ald. Hess-Mahan said that Marie Lawlor, Assistant City Solicitor, and David Naparstek, Commissioner of Health and Human Services, looked at these changes and approved them.

Ald. Johnson asked if the fines needed to be progressive instead of a flat fine. D.J. Wilson said a flat fine could work but could be no higher than \$300. Ald. Baker said if Newton would like to be consistent with other communities it may be better to keep the tiered fines. D.J. Wilson agreed that consistency would be the ideal.

Notification

Ald. Johnson said she would like the retail establishments to have some written notification of these changes. D.J. Wilson agreed that it was a good idea to notify them and perhaps a letter could go out from Licensing.

Ald. Hess-Mahan moved approval of this item and the Committee voted in favor.

#298-09 ALD. MANSFIELD proposing Home Rule Legislation to amend **Article 2, Section 2-1(c) Composition; Eligibility; Election and Term** of the Newton Charter to establish four-year terms for Aldermen-at-Large with the provision for one Aldermen-at-Large to be elected from each ward at each biennial municipal election. [09-29-09 @ 6:45 PM]

ACTION: **REFERRED TO 2010-1011 BOARD 8-0**

NOTE: Ald. Mansfield has asked that the Committee postpone the discussion of this item. Ald. Johnson suggested referring this to the new Board and the Committee voted in favor.

#262-07 ALD. VANCE AND HESS-MAHAN seeking approval by the Board of Aldermen of a home rule petition to the General Court that would authorize an amendment to the charter of the City of Newton that would change the length of terms of the members of the Board of Aldermen to three years and would provide for electing one-third of the aldermen, one from each ward, every year. [08/22/07 @ 3:53 PM]

ACTION: **REFERRED TO 2010-1011 BOARD 8-0**

NOTE: Ald. Vance has asked that the Committee postpone the discussion of this item. Ald. Johnson suggested referring this to the new Board and the Committee voted in favor.

#95-09 TOM SHEFF requesting the Board of Aldermen appoint an advisory committee made of up persons who are not elected officials to review the daily processes of the Board of Aldermen and report recommended efficiency improvements to the Board of Aldermen. [03/26/09 @8:34 pm]

ACTION: **NO ACTION NECESSARY 8-0**

NOTE: Ald. Parker asked if there were specific processes or a specific event that prompted this item. Ald. Sangiolo said, for example, she found some fairly similar docket items docketed a couple of years apart that were still on agendas. Ald. Johnson said her conversations with Mr. Sheff led her to believe that taking a fresh look at things, similar to the Citizen Advisory Group, could yield some new ideas.

Ald. Hess-Mahan explained that this item was discussed in the Long Range Planning Committee. That Committee made the following recommendations:

- Establish Advisory Committee in early 2010 to review processes of the Board of Aldermen and report recommended efficiency improvements to the Board of Aldermen
- Advisory Committee should be comprised of 5-8 members including past and present aldermen with range of years of service, citizens with expertise including a process person with organizational background, and an information technology professional with database management experience
- Review of processes of the Board of Aldermen should include workflow, public communication, and committee organization and structure as well as other areas of interest to be determined by the Advisory Committee
- Review of workflow should include analysis of the amount of time docket items remain on committee agendas before discussions and/or actions take place, and development of searchable database indicating status of each docket item with links to agendas, reports and other documents
- Review of public communications should include online availability and retrieval of agendas, reports and other documents from the aldermanic website, explanation of process at public hearings and meetings, and methods for providing effective notice of meetings, hearings and other important events

- Review of committee organization and structure should include possible creation, consolidation and/or elimination of committees or functions of committees, and referral of certain types of items to more than one committee

The Long Range Planning Committee did not discuss whether the Advisory Committee should be an ad hoc or a standing committee, which is an issue that the Programs & Services Committee may wish to address.

Ald. Baker felt an ad hoc committee would be best. Ald. Hess-Mahan said that Tom Sheff had expressed an interest in an ongoing standing committee. Ald. Johnson said that wouldn't work since all the members would not be board members.

Appointing Authority

There was a question as to who would appoint the members of the advisory committee. Ald. Johnson wanted the process to be transparent. Her recommendation was that the next Chairman and Vice Chairman of the Programs & Services Committee should work with the next President of the Board to assemble the advisory committee. She noted that she would not be the Chairman in the next term.

Follow Up

Programs & Services Committee will docket a new item to include the appointing authority and to remove the specific reference to "persons who are not elected officials" as the advisory committee may include elected officials.

The Committee voted No Action Necessary for this item and will refer the parents (2) item to the next Board.

#8-09 ALD. HESS-MAHAN, LINSKY, ALBRIGHT, FREEDMAN, MANSFIELD, JOHNSON, HARNEY & VANCE proposing an ordinance requiring that the installation of synthetic in-filled turf athletic fields on city-owned property shall use sustainable, recyclable, lead-free, non-toxic products to the maximum extent feasible. [12/30/08 @ 9:55 AM]

ACTION: **HELD 7-0 (Ald. Parker not voting)**

NOTE: Ald. Hess-Mahan provided various definitions for "maximum extent feasible" as that term is used in the docket item. It was attached to the agenda. There was a question at the last discussion of this item as to what that meant. The definition he felt was relevant for this particular item is: "...capable of being accomplished in a successful manner within a reasonable period of time, taking into account estimated cost, effectiveness, environmental, safety, public health, legal and technological factors."

Ald. Hess-Mahan does not want to stop the installation of the fields or make them prohibitively expensive. He would like to see some efforts made for a reasonable selection. He also noted that products change quickly so he didn't want to restrict things too much. Ald. Johnson asked where this would go in the Newton Ordinances. Ald. Hess-Mahan said he needed further consultation from the Law Department.

Follow Up

Ald. Hess-Mahan said he would follow up with the Law Department to find out about placement of this in the ordinances. He would also check with Nick Parnell to find out if product selection has been completed for Newton North High School. If not, they might be able to get this ordinance in place in time to influence that choice.

The Committee voted to hold this item.

Meeting adjourned.

Respectfully Submitted,

Marcia Johnson, Chairman

Newton Parks and Recreation Department
 BAA Marathon Money
 11/12/2009

Newton Parks and Recreation Department Playground Renovations 2002 - 2012

Site	Year Marathon money received	Marathon money amount
Lincoln Warren	FY02	\$ 12,500.00
Memorial Spaulding	FY02	\$ 12,500.00
Albemarle	FY03	\$ 37,500.00
Upper Falls	FY04	\$ 12,500.00
Newton Centre	FY04	\$ 12,500.00
Cabot Tot Lot	FY05	\$ 12,500.00
Hunnewell Park	FY05	\$ 12,500.00
Bowen School	FY06	\$ 12,500.00
Charlesbank	FY06	\$ 12,500.00
Angier	FY07	\$ 12,500.00
Carr School	FY07	\$ 12,500.00
Newton Highlands	FY09	\$ 12,500.00
Solomon Schecter	FY09	\$ 12,500.00
Lincoln Eliot	FY09	\$ 12,500.00
Burr School	FY09	\$ 12,500.00
Franklin School	Scheduled FY10	\$ 12,500.00
West Newton Common	Scheduled FY10	\$ 12,500.00
Lower Falls CC	Scheduled FY11	\$ -
Underwood School	Scheduled FY11	\$ -
Crescent St Playground	Scheduled FY12	\$ -
Williams School	Scheduled FY12	\$ -

The Revised Ordinances of the City of Newton, Massachusetts 2007 are hereby amended by inserting the following provision in Section 20-2(b) *Definitions*:

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.

The Revised Ordinances of the City of Newton, Massachusetts 2007 are hereby amended by inserting the following provision in Section 20-2 after paragraph (g) thereof, and renumbering paragraphs (h) through (i) thereof, respectively, as paragraphs (i) through (j):

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

No health care provider located in the City of Newton shall sell tobacco products or cause tobacco 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 cause tobacco products to be sold.



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An Unfortunate and Avoidable Component of American Pharmacy: Tobacco

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Other Sections ▼

If there was a drug contained within a delivery device provided through pharmacies that had a mortality associated with its use amounting to over 450,000 deaths in the United States and was a leading contributor to untold morbidity, would not our collective voice be heard to eliminate this product from our pharmacy milieu? The product is nicotine wrapped in the deadly delivery mechanism of cigarettes and other tobacco products.

Of the roughly 60,000 pharmacies in the United States, about 70% are chain community pharmacies or food market-based pharmacies. Tobacco is sold in almost all of these pharmacies, with the exception of a few. Traditional chains, mass merchandiser and food market-based pharmacies have been suggested to sell more tobacco products than other types of pharmacies.¹ As a percentage of total sales, tobacco products account for much less than 1%. A major inducement for some pharmacies to continue to sell cigarettes is the significant promotional funding provided by US tobacco manufacturers. This is over and above their meager tobacco sales profits.

In a replicated study of tobacco sales in pharmacies in the San Francisco area, Eule et al found that in 2003, 61% of surveyed pharmacies sold cigarettes, which was down from 89% of pharmacies selling cigarettes in 1976.² More than 8 out of 10 of the pharmacies continuing to sell cigarettes also displayed cigarette advertising.² Over-the-counter nicotine replacement (NRT) products were sold by 78% of pharmacies. Following a bizarre placement scheme, 55% of the pharmacies selling cigarettes displayed these NRT products immediately adjacent to the cigarettes.²

What do our pharmacy colleagues around the globe have to say about tobacco sales in pharmacy? In 2004, in New Orleans, the Fédération Internationale Pharmaceutique (FIP), representing pharmacists worldwide, recommended that pharmaceutical organizations diligently pursue policies stating that tobacco products are not sold in pharmacies, and that licensing bodies should not license pharmacies that are located in premises in which such products are sold. The FIP also recommended that smoking not be permitted in pharmacies.³ The Pharmaceutical Society of Australia supports the Quality Care Pharmacy Program which includes a mandatory pharmacy accreditation standard under which stocking or selling tobacco products is prohibited.⁴

Some chains allow individual store managers to make the decision to sell or not sell cigarettes. The Target Corporation pulled tobacco from shelves over a decade ago for economic reasons. The low profit margins, high potential for theft, and expensive-to-implement ordinances to control sales to minors have made selling cigarettes much less appealing to retailers. Some mass merchandisers have pulled cigarettes from shelves in 1 country while continuing to heavily promote tobacco sales in developing countries.

Most recently, the Wegmans' regional food market chain made the decision to stop selling cigarettes.⁵ In a letter to employees, CEO Danny Wegman and daughter Colleen Wegman (company president), noted: "We believe there are

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few of us who would introduce our children to smoking."⁵ This action is noteworthy in and of itself, but the food market retailer is also providing smoking cessation programs for company employees.⁵

The World Health Organization (WHO) estimates that worldwide, tobacco has been estimated to have killed 100 million individuals in the past century, this total could reach 1 billion in the current century.⁶ Alarmingly, roughly 50% of the world's children live in countries that do not ban free distribution of tobacco products. Many of the cigarettes marketed and sold worldwide are from US-based tobacco manufacturers.

According to Mathers and Loncar, tobacco use is a risk factor for 6 of the 8 leading causes of death in the world (ischemic heart disease, cerebrovascular disease, lower respiratory infections, chronic obstructive pulmonary disease, tuberculosis, and trachea and bronchus lung cancers).⁷ No doubt tobacco use is a cofactor in other morbidity-inducing diseases as well.

Thirty percent of the world's smokers live in China—350 million Chinese smoke, which is more than the entire US population. There is perverse incentive for the Peoples Republic of China to encourage its citizens to smoke since tobacco sales in China are controlled by the government, netting them an estimated profit of \$30 billion (US dollars) yearly.

The recent World Health Organization report on the global tobacco epidemic promotes an "mpower" movement, which seeks to implement 6 components⁸:

- Monitor tobacco use and prevention policies
- Protect people from tobacco smoke
- Offer to help others to quit tobacco use
- Warn about the dangers of tobacco
- Enforce bans on tobacco advertising, promotion, and sponsorship.
- Raise taxes on tobacco

Our students need to be familiar with this report, the state of tobacco-induced morbidity and mortality worldwide, and what they can do about stemming tobacco use in their practices in the future.

In ambulatory settings, US pharmacy students are learning to practice our profession, or working part time, in pharmacies that are a part of store footprints in which tobacco products are sold. Furthermore, a significant number of advanced pharmacy practice experience sites are located in places that sell tobacco products. In my mind, this is unconscionable.

US pharmacy students need an expanded worldview that includes how the world perceives pharmacists in the United States and what we do in theory and practice. All of us within our academy need to have an expanded tobacco related worldview as well. Seeing the United States as the major promoter of tobacco products worldwide and observing that a significant percentage of our educational programs are located in sites that are in tobacco-selling venues does not send a proactive message on public health promotion to the rest of the world. Dr. LEE Jong-wook, former director of the World Health Organization in 2005 noted:

Doctors, nurses, midwives, dentists, pharmacists, chiropractors, psychologists and all other professionals dedicated to health can help people change their behaviour. They are on the front line of the tobacco epidemic and collectively speak to millions of people.⁸ (p.37)

Now over a decade after this statement, our academia along with other pharmacy professional and trade organizations, have not done what we can and should do to optimally stem the deaths resultant from tobacco use. So, what should we do? Encourage our students upon graduation to encourage potential and current employers not to sell tobacco products. Encourage our pharmacy colleagues to stop selling tobacco products in pharmacies. Work within our preceptor programs to encourage practice sites to stop selling tobacco products.

Projections of global mortality and burden of disease from 2002 to 2030. [PLoS Med. 2006]

Be conscious of our connection to practice communities here and abroad, and realize the not so subtle messages we send globally by our lack of proactive public health actions, and not just via the exportation of our outstanding academic programs. Work continuously to get tobacco products out of our professional milieus. Make this an objective for inclusion in our school advisory board discussions. Work to make our university campuses smoke free. Demand that university student unions stop selling tobacco products (Why on earth does this occur?). Work with our current accrediting organization to make this a priority within its hierarchy to examine the total milieu where our pharmacy programs place students. Work with other organizations within pharmacy and public health to encourage pharmacies to "butt out" of the tobacco business once and for all, and for the well-being of all worldwide.

Finally, are there other products that can be equally as detrimental to consumers' health that pharmacists should be working to stem the sales of? Should not efforts be focused on venues selling products such as alcohol or firearms? Sadly, these additional death-inducing products also are sold in some pharmacies. Thus, stopping tobacco sales in pharmacies is just a first step of many that pharmacists should take for the betterment of our patients' health.

REFERENCES

Other Sections ▼

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Chapter 20

OFFENSES AND MISCELLANEOUS PROVISIONS□

Art. I Smoking, Tobacco 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, §§ 20-31—23-30

Art. V. Tree Preservation, §§ 20-31—20-39

Art. VI. Fences, §§ 20-40—20-49

Art. VII. Miscellaneous, §§ 20-50—20-63

ARTICLE I. SMOKING, TOBACCO PRODUCTS AND ALCOHOLIC BEVERAGES

Sec. 20-1. Distribution of Tobacco Products.

No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking 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 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.

(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 eighteen (18); 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 ~~requiring proof of age in order to purchase tobacco products is necessary in order~~ 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 to make tobacco 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:

City: City of Newton.

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

~~*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.~~

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.

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.

Minor: Any individual who is under the age of eighteen (18).

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.

~~*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.~~

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

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.

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

(c) *Sales to minors prohibited:*

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

(2) *Notice of prohibition:* 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.

~~(3) Identification: A person selling tobacco products shall request and examine identification from any purchaser suspected of being a minor, and shall positively establish the purchaser's age as eighteen (18) years or older before allowing the purchase.~~

~~The following shall constitute positive identification: a valid Massachusetts driver's license; or a certified birth certificate along with a picture identification card, or two other similar forms of identification, one of which shall be a picture identification card.~~

(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 years old or older. Verification is required for any person under the age of 27.

(d) *Tobacco sales permit:*

(1) No person shall sell or otherwise distribute tobacco within the city without first obtaining a tobacco sales permit issued by the commissioner. ~~The sale or free distribution of individual or loose cigarettes is prohibited.~~ Only owners of establishments with a permanent, non-mobile location in Newton are eligible to apply for a permit and sell tobacco products at the specified location in Newton.

~~(2) An application for a tobacco sales permit shall be filed by each person required to comply with this section no later than sixty (60) days following the effective date of this section.~~ (2) As part of the tobacco 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 sales regarding both state laws regarding the sale of tobacco and this regulation.

(3) Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.

(4) The fee for an initial tobacco 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.

(45) A separate permit is required for each retail establishment selling tobacco.

(6) Each tobacco sales permit shall be displayed ~~on the premises~~ at the retail establishment in a conspicuous place.

~~(e) No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes, or any agent or employee of such person, shall distribute a cigarette or other tobacco or smoking product free to any person. Furthermore, no person shall sell or otherwise distribute a cigarette or other tobacco smoking product to a minor. (7) No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco 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 sales permit is non-transferable. A new owner of an establishment that sells tobacco must apply for a new tobacco 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 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 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.

(fe) Tobacco products vending machines:

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

(gf) Self service displays:

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

~~(h) Violations and penalties:~~

~~(1) A person who violates the provisions of subsection (d)(1) of this section shall be subject to a fine of one hundred dollars (\$100.00) for each violation. Every hour or part thereof 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 fine of seventy five dollars (\$75) for the first offense, one hundred and fifty~~

~~dollars (\$150) for the second offense and three hundred dollars (\$300) for the third and each subsequent offense~~

(hg) Ban on Free Distribution and Single Cigarettes:

No person shall distribute, or cause to be distributed, any free samples of tobacco 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.

(ih) 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 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 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 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 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. ~~In addition, three (3) violations of this section within three (3) years, calculated from the date of the first offense, by the same permit holder shall be cause for revocation or suspension of the tobacco sales permit, pursuant to subsection (h)(3) of this section.~~

(f) Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco sales permit for thirty (30) consecutive business days.

(3) The commissioner shall ~~suspend or revoke a tobacco 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 sales permit, which notice shall contain the reasons therefor 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 therefor, in writing. All tobacco products shall be removed from the premises upon suspension or revocation of the tobacco 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.

~~(j)~~(i) *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)

Sec. 20-3 – 20-4. Reserved.

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)

Secs 20-8—Sec. 20-12. Reserved.

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

(b) HEALTH AND HUMAN SERVICES DEPARTMENT: The commissioner of health and human services, and/or his or her designee, sanitary inspectors of the health and human services department, the chief of police and/or his or her designee, and the administrative director of the board of license commissioners and/or his or her designees shall be authorized to issue written notice of the following violations:

PENALTY

Section 20-2. Sale of tobacco products

First offense of any provision of § 20-3, except subsection (d)(1).....	\$ 75 <u>100</u> .00
Second offense of any provision of § 20-3, except subsection (d)(1).....	\$ 150 <u>200</u> .00
Third or subsequent offense of any provision of § 20-3, except subsection (d)(1)	\$300.00
Any offense of the provisions of § 20-3, subsection (d)(1).....	\$ 100 <u>300</u> .00

Sec. 20-7. Smoking prohibited on sidewalks and other public property

First offense.....	\$50.00
Second offense.....	\$100.00
Third or subsequent offense.....	\$200.00