

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO. A-42

June 16, 2014

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

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended with respect to **Article I of Chapter 20** follows:

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

“, Nicotine Delivery Products”

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

“; now, therefore, it is the policy of the City of Newton to discourage minors from experimenting with tobacco and nicotine and to make tobacco products and nicotine delivery products less accessible to minors.”

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

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

Characterizing flavor: a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either

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

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

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

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

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

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

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

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

purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

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

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

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

AND

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

"or nicotine delivery products"

AND

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

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

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

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

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

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

“(2) *Required signage and*”

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

AND

Add the following subparagraphs:

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

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

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

“and nicotine delivery product”

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

“or nicotine delivery products”

AND

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

“and nicotine delivery product”

AND

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

"and/or nicotine delivery"

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

"and nicotine delivery product"

AND

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

"or nicotine delivery product"

AND

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

"to minors"

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

"selling or distributing tobacco"

AND

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

"and nicotine delivery product"

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

"and nicotine delivery product"

AND

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

“no later than June 1”

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

“and/or nicotine delivery products”

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

“and nicotine delivery product”

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

“(7) No tobacco and nicotine delivery product sales permit holder shall allow any employee to sell cigarettes, other tobacco products, or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco to minors and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.”

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

“A tobacco and nicotine delivery product sales permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new tobacco and nicotine delivery product sales permit.”

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

“and nicotine delivery product”

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

“and nicotine delivery product”

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

“products or nicotine delivery”

AND

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

“products or nicotine delivery”

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

“products or nicotine delivery”

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

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

AND

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

“or nicotine delivery products”

AND

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

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

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

“or Nicotine Delivery Products”

AND

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

“or nicotine delivery products”

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

“(i) Cigar sales regulated:

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

(j) Sale of flavored tobacco or nicotine delivery products prohibited:

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

(k) Prohibition of the sale of blunt wraps:

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

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

“and nicotine delivery product”

AND

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

“or nicotine delivery product”

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

“and nicotine delivery product”

AND

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

“and nicotine delivery products”

AND

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

“and nicotine delivery product sales”

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

“or nicotine delivery”

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

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

AND

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

“or nicotine delivery”

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

“or nicotine delivery product”

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

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

The use of e-cigarettes as defined in Sec. 20-2(b) is prohibited wherever smoking is prohibited under M.G.L Chapter 270, Section 22 (the Smoke-Free Workplace Law"), and in all locations listed in Section 20-7 of this ordinance. The Commissioner of Health and Human services and/or his or her designee(s) shall enforce this section in accordance with Sec. 20-7(c).

Approved as to legal form and character:


DONNALYN B. LYNCH KAHN
City Solicitor

Under Suspension of Rules

Readings Waived and Adopted as follows:

A) to prohibit use of nicotine delivery products in places where use of tobacco products is prohibited APPROVED 22 yeas 0 nays 1 absent (Alderman Lappin) 1 vacancy

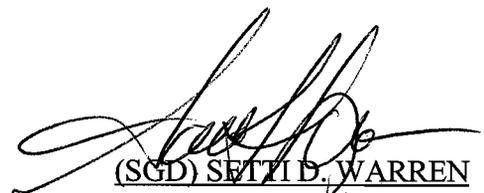
B) to regulate the sale of tobacco products and nicotine delivery products containing flavoring other than regular and menthol APPROVED 17 yeas 5 nays (Aldermen Ciccone, Gentile, Harney, Norton, Lennon) 1 absent (Alderman Lappin) 1 vacancy

C) to increase the minimum age for purchasing tobacco and nicotine delivery products to 21 APPROVED 13 yeas 9 nays (Aldermen Albright, Ciccone, Cote, Hess-Mahan, Johnson, Laredo, Lipof, Sangiolo, and Lennon) 1 absent (Alderman Lappin) 1 vacancy

D) to further regulate signage APPROVED 22 yeas 0 nays 1 absent (Alderman Lappin) 1 vacancy

E) to regulate minimum cigar pricing and packaging, blunt wrappers and roll-your-own machines APPROVED 17 yeas 5 nays (Aldermen Ciccone, Cote, Gentile, Harney, and Norton) 1 absent (Alderman Lappin) 1 vacancy


(SGD) DAVID A. OLSON
City Clerk


(SGD) SETH D. WARREN
ACTING MAYOR

Date: 6/20/14