

**TOWN OF BRUNSWICK, MAINE**

**TOWN COUNCIL**

**ADOPTION OF THE ORDINANCE BANNING THE SALE OF FLAVORED TOBACCO PRODUCTS**

**WHEREAS**, Brunswick, Maine has a substantial interest in protecting the health and safety of its residents, including the youth of the community, from dangerous products such as tobacco;

**WHEREAS**, tobacco use remains a significant public health problem and impediment to health equity in Brunswick, Maine and the United States;

**WHEREAS**, tobacco use remains the leading cause of preventable death in the U.S., killing more than 480,000 Americans each year, including 2,400 in Maine;

**WHEREAS**, according to the Surgeon General, nicotine can harm the parts of the adolescent brain responsible for attention, learning, mood and impulse control, and can prime the brain for addiction to other drugs;

**WHEREAS**, menthol cigarettes and other flavored tobacco products have been shown to be “starter” products for youth who begin using tobacco and these products help establish tobacco habits that can lead to long-term addiction;

**WHEREAS**, eight out of ten youth who have ever used a tobacco product initiated with a flavored product;

**WHEREAS**, the growing market for flavored tobacco products is undermining the nation’s overall progress in reducing overall youth tobacco use, which is at the same level as it was a decade ago;

**WHEREAS**, the U.S. Surgeon General declared youth e-cigarette use an “epidemic” in 2018;

**WHEREAS**, high school e-cigarette use nearly doubled in Maine from 2017 to 2019, from 15.8% to 30.2%;

**WHEREAS**, 19.6% of U.S. high school students and 4.7% of U.S. middle school students—3.6 million youth—are current e-cigarette users;

**WHEREAS**, e-cigarette use remains at epidemic levels, despite declining in 2020. From 2017 to 2019, e-cigarette use more than doubled among high school students and more than tripled among middle school students;

**WHEREAS**, nearly 40% of U.S. high school e-cigarette users are frequent users, an indicator of addiction;

**WHEREAS**, e-cigarettes are available in over 15,000 flavors including kid-friendly flavors like cotton candy, gummy bear and pink lemonade;

**WHEREAS**, 82.9% of youth e-cigarette users use flavored products;

**WHEREAS**, 70% of youth e-cigarette users say they use e-cigarettes “because they come in flavors I like”;

**WHEREAS**, youth e-cigarette use is associated with an increased risk for cigarette smoking;

**WHEREAS**, cigars are the second most popular tobacco product among youth and are disproportionately used by Black youth;

**WHEREAS**, cigars are sold in over 250 flavors—like Banana Smash, Chocolate Brownie and Cherry Dynamite—that attract youth and mask the harsh taste of tobacco;

**WHEREAS**, each day, more than 1600 kids in the U.S. try their first cigarette;

**WHEREAS**, menthol, in particular, cools and numbs the throat and reduces irritation, making menthol cigarettes an appealing option for youth who are initiating tobacco use;

**WHEREAS**, the U.S. Food and Drug Administration has concluded that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction, and decreased success in quitting smoking;

**WHEREAS**, about half of high school smokers use menthol cigarettes;

**WHEREAS**, the tobacco industry has targeted African American communities for decades with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, and retail promotions;

**WHEREAS**, 85 percent of all Black smokers smoke menthol cigarettes;

**WHEREAS**, each year, approximately 45,000 African Americans die from a smoking-caused illness;

**WHEREAS**, parents, schools, students and public health organizations, including the American Cancer Society Cancer Action Network, American Lung Association, American Heart Association, the Campaign for Tobacco-Free Kids, Bangor Public Health & Community Services, U.S. PIRG, Healthy Communities of the Capital Area, Maine Chapter of the American Academy of Pediatrics, Maine Public Health Association, Out Maine, Be the Influence, Access Health, Maine Medical Association, Brunswick Area Teen Center, AMHC, Healthy Acadia, Maine Association for Health, Physical Education, Recreation, and Dance, Midcoast Youth Center, Sagadahoc County Board of Health, Equality Maine, Maine Children’s Alliance, River Valley Rising, Consumers for Affordable Health Care, MaineHealth, Maine Recreation & Park Association, The Center for Black Health & Equity, Westbrook Partners for Prevention, Healthy Androscoggin, Central Maine Healthcare, and Partnership for Children’s Oral Health support prohibiting the sale of all flavored tobacco products;

**WHEREAS**, quitting nicotine isn’t easy, but it can be done with the right support;

**WHEREAS**, our community needs to provide resources aimed at providing behavioral support and psychoeducation for students using substances that is a youth-centered, education-based program designed to support students using any substance;

**WHEREAS**, a program may serve an alternative to suspension, expulsion, and other exclusionary practices for school-based substance use infractions and can also be used as a secondary prevention effort for youth at risk for escalation to problematic substance use;

**WHEREAS**, best practices incorporate community programs to reduce tobacco use and make smoking not the norm, statewide programs, cessation programs, counter marketing efforts, including paid broadcast and print media, media advocacy, public relations, public education, and health promotion activities, surveillance and evaluation, and administration and management.

**NOW THEREFORE** the attached amendments to the Brunswick Municipal Code of Ordinances are adopted, prohibiting the sale of flavored tobacco products effective as of June 1, 2022.

Proposed to Town Council – February 7, 2022

Public Hearing – April 4, 2022

Adopted by Town Council – April 19, 2022

## **ARTICLE X. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED**

**Sec. 14-XX1. Authority.** This ordinance is enacted pursuant to 22 M.R.S. § 1556.

**Sec. 14-XX2. Definitions.**

The following words, terms, and phrases, when used in this article shall mean:

*Electronic smoking device* means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

*Flavored tobacco product* means any tobacco product that imparts a taste or smell, other than the taste or smell of tobacco, either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb, or spice.

*Retailer* means any person or entity that sells tobacco products to consumers in the Town of Brunswick.

*Tobacco product* means:

1. any product containing, made of, or derived from tobacco or nicotine, natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. any electronic smoking device and any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, or pipes.

*Tobacco product* does not mean:

1. drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act; or
2. any product containing marijuana, as defined in 28-B M.R.S. § 102, unless such product contains, is made of, or is derived from tobacco or nicotine, natural or synthetic.

**Sec. 14-XX3. Sale of Flavored Tobacco Products Prohibited.**

1. No retailer may sell or offer for sale any flavored tobacco product, or display, market, or advertise for sale in the Town of Brunswick, any flavored tobacco product.
  2. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a retailer, manufacturer of tobacco products, or any employee or agent of a retailer or manufacturer of tobacco products has:
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- a. made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco;
  - b. used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or
  - c. taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.

**Sec. 14-XX4. Enforcement.**

*Enforcement.* The Police Department shall have the primary responsibility for enforcement of this ordinance and may conduct random inspections at locations where tobacco products are sold to test and ensure compliance with this ordinance.

**Sec. 14-XX5. Penalties.**

*Violations and penalties.* Violators of this ordinance shall be given a warning for the first offense. Any subsequent offenses will result in a civil violation and a fine in accordance with the Master Schedule of Revenues, Charges, Fees and Fines. Each day on which a violation occurs shall be considered a separate and distinct violation.

**Sec. 14-XX6. Effective Date.**

This ordinance shall become effective on June 1, 2022.

**Sec. 14-XX7. Severability.**

If any part or provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect.

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