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## MEMORANDUM

**TO:** Meredith J. DeSisto, Town Clerk (for distribution to Town Council)  
James J. Cunha, Town Manager

**FROM:** Amy H. Goins, Assistant Town Solicitor

**DATE:** June 1, 2020

**SUBJECT:** Repeal of Tobacco Ordinance

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As you know, on January 31, 2020, the Rhode Island Supreme Court held that the Town lacked the authority to enact an ordinance banning the sale of flavored tobacco products and prohibiting the providing of any tobacco products to persons under the age of 21. K&W Auto., LLC, v. Town of Barrington (R.I. Jan. 31, 2020). Consistent with this decision, we have prepared a repeal ordinance for your review. This draft ordinance would repeal Chapter 170 ("Tobacco") in its entirety. Chapter 170 was adopted in November 2017 by Ordinances 2020-17 and 2020-18, both of which were invalidated in the K&W Auto decision. Accordingly, Chapter 170 would be stricken and renamed 'Reserved.'

**TOWN OF BARRINGTON, RI**

**Ordinance No. 2020-12  
Ch. 170 – TOBACCO  
REPEAL OF CHAPTER**

*Strike Chapter 170 in its entirety and rename 'Reserved'*

**§ 170-1 Definitions:**

~~As used in this chapter, the following terms shall have the meanings indicated:~~

**~~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 or the provision of ingredient information.~~

**~~ELECTRONIC SMOKING DEVICE~~**

~~An electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately.~~

**~~ELECTRONIC SMOKING DEVICE ESTABLISHMENT~~**

~~Any business which does not sell food or beverages and for which the principal or core business is selling electronic smoking devices, as evidenced by any of the following: 33% or more of floor or display area is devoted to electronic smoking devices; or 67% or more of gross sales receipts are derived from electronic smoking devices.~~

**~~FLAVORED TOBACCO PRODUCT~~**

~~Any tobacco product, other than a cigarette, that contains a constituent that imparts a characterizing flavor.~~

**~~PERSON~~**

~~Any natural person, partnership, firm, joint stock company, corporation, or employee thereof, or other legal entity.~~

**~~SALE OR SELL~~**

~~Any transfer, exchange, barter, gift, offer for sale, or distribution, in each case for a commercial purpose, in any manner or by any means whatsoever.~~

**~~TOBACCO PRODUCT~~**

~~A. — Includes:~~

~~(1) — Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff; and~~

~~(2) — Any device that delivers nicotine to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.~~

~~B. — Notwithstanding any provision of Subsection A(1) and (2) in this definition to the contrary, tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes.~~

**§ 170-2 Sale of flavored tobacco.**

~~A. — This section shall not apply to an electronic smoking device establishment as defined herein.~~

~~B. — Other than in an electronic smoking device establishment, the sale of flavored tobacco products is prohibited.~~

~~(1) — No person shall sell any flavored tobacco product to a consumer.~~

~~(2) — A noncigarette tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:~~

~~(a) — Made a public statement or claim that the noncigarette tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate information about the flavor, taste, or aroma of a noncigarette tobacco product; or~~

~~(b) — Taken action directed to consumers that would be reasonably expected to result in consumers believing that the noncigarette tobacco product imparts a characterizing flavor.~~

**§ 170-3 Fines.**

~~A person who violates any provision of this chapter shall be subject to a fine of \$100 for each separate offense.~~

**§ 170-4 Severability.**

If any provision of this chapter, or application thereof to any person or circumstances, is held unconstitutional, illegal, or otherwise invalid, the remaining provisions of this chapter and the application of such provisions to other persons or circumstances, other than those to which it is held invalid, shall not be affected thereby.

~~§ 170-5 through § 170-8. (Reserved)~~

~~§ 170-9 Prohibition of selling, giving, or providing tobacco products to persons under 21 years of age.~~

- ~~A. No person in the Town of Barrington shall sell, give, or in any way provide tobacco products, as defined in this chapter, to any individual under 21 years of age. This prohibition applies to all tobacco products. Giving, selling, or providing multiple tobacco products to a single individual who is under the age of 21 within a single twenty-four hour period shall be considered a single violation of this section and a single offense under § 170-9B.~~
- ~~B. A person who sells, gives, or provides tobacco products to an individual under 21 years of age shall be subject to a first offense fine of \$100. The fine shall be \$350 for the second offense and \$500 for the third or any subsequent offense occurring within one year of the first offense. A subsequent offense may only be charged if the date of such offense is after the date that a summons for the prior offense was issued or mailed.~~
- ~~C. It is a defense to violation of this section if an individual who is under the age of 21 provides false identification indicating that the individual is 21 years old or older.~~

~~§ 170-10 Enforcement.~~

~~The Town of Barrington shall prosecute any alleged violation of Chapter 170 in Barrington Municipal Court. Any Municipal Court summons for any alleged violation of this chapter shall be issued or mailed to the alleged violator within 15 days of the alleged offense date. If the alleged violator is not issued or mailed a Municipal Court summons within 15 days of the alleged violation offense date, then the Town is barred from prosecuting that alleged violation.~~

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This Repeal shall take effect upon passage.

  
Council Member

Filed: June 2, 2020

Introduced: June 8, 2020

Adopted: