

February 13, 2025

SAFETY COMMITTEE

February 18, 2025

Council Chambers

Following Finance Committee

Committee and Council Meetings can be viewed by accessing YouTube

AGENDA

1. Consider **Resolution No. 25-10** A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SAFETY FOR THE CITY OF NEWARK, OHIO, TO RELEASE THE LIEN PREVIOUSLY PLACED AGAINST THE PROPERTY LOCATED AT AND KNOWN AS 900 JONES AVENUE, NEWARK, OHIO (PARCEL NO. 054-192078-00.000) AND DECLARING AN EMERGENCY
2. Consider **Ordinance No. 25-06** AN ORDINANCE AMENDING PART 8, TITLE TWO: BUSINESS REGULATIONS OF THE CODIFIED ORDINANCES OF THE CITY OF NEWARK, OHIO WITH MARKETING CARTRIDGE-BASED ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS) PRODUCTS AND OTHER ENDS PRODUCTS THAT HAVE NOT OBTAINED PREMARKET AUTHORIZATION
3. Other items at the discretion of the chair

RESOLUTION NO. 25-10

BY: _____

A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SAFETY FOR THE CITY OF NEWARK, OHIO, TO RELEASE THE LIEN PREVIOUSLY PLACED AGAINST THE PROPERTY LOCATED AT AND KNOWN AS 900 JONES AVENUE, NEWARK, OHIO (PARCEL NO. 054-192078-00.000) AND DECLARING AN EMERGENCY

WHEREAS, on December 2, 2024 this Council authorized pursuant to Ordinance 24-43, the placement of a lien against the property located at and known as 900 Jones Avenue, Newark, Ohio (“Property”) in the amount of \$5,400.00 as and for costs incurred by the Newark City Property Maintenance Department with respect to property maintenance violations; and,

WHEREAS, prior to the filing of the lien with the Licking County Auditor’s Office on December 27, 2024, Roy Van Atta, Licking County Treasurer, filed a foreclosure action in the Licking County Common Pleas Court concerning the Property; and,

WHEREAS, prior to the filing of the lien with the Licking County Auditor’s Office on December 27, 2024, Roy Van Atta, Licking County Treasurer, was granted judgment in foreclosure on July 18, 2024 by the Licking County Common Pleas Court and the Property sold at a public Sheriff’s sale to a third party on October 17, 2024; and,

WHEREAS, prior to the filing of the lien with the Licking County Auditor’s Office on December 27, 2024, the Sheriff’s sale selling the property to a third party was confirmed by the Licking County Common Pleas Court on November 1, 2024, pursuant to law via Judgment Entry; and,

WHEREAS, the release of the lien underlying the Property in question will appropriately reflect the impact of the foreclosure proceeding and subsequent sale of the Property to a new owner with whom the City of Newark no longer has a claim for costs incurred by the Newark City Property Maintenance Department with respect to property maintenance violations; and

WHEREAS, an emergency exists in that to protect the best interests of the residents of the City of Newark, the lien must be released in light of the aforementioned foreclosure and sale proceedings.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEWARK, COUNTY OF LICKING AND STATE OF OHIO, THAT:

SECTION ONE: The Director of Public Safety is hereby authorized and directed to release the lien previously authorized by the Council at Ordinance 24-43 as against the property located at and known as 900 Jones Avenue, Newark, Ohio and to prepare, execute, and record any and all necessary documents to facilitate the release thereof.

SECTION TWO: This Resolution shall become immediate upon approval as an emergency for the reasons as stated herein pursuant to Article 4.07 of the Charter of the City of Newark, Ohio.

Passed this _____ day of _____, 2025.

PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

DATE FILED WITH MAYOR: _____

DATE APPROVED BY MAYOR: _____

MAYOR

FORM APPROVED: _____
DIRECTOR OF LAW

Prepared by the Office of the Director of Law

BY _____

**AN ORDINANCE AMENDING PART 8, TITLE TWO: BUSINESS
REGULATIONS OF THE CODIFIED ORDINANCES OF THE CITY OF
NEWARK, OHIO WITH MARKETING CARTRIDGE-BASED ELECTRONIC
NICOTINE DELIVERY SYSTEMS (ENDS) PRODUCTS AND OTHER ENDS
PRODUCTS THAT HAVE NOT OBTAINED PREMARKET AUTHORIZATION**

WHEREAS, the Codified Ordinances of the City of Newark, Ohio currently contain various provisions in regard to safety, sanitation, and health; and,

WHEREAS, the City of Newark currently has multiple businesses within its jurisdiction selling cartridge-based electronic nicotine delivery systems (or ENDS) products; and,

WHEREAS, the City of Newark is a charter city and exercises Home Rule pursuant to Article XVIII, Section 3 of the Ohio Constitution for other businesses in the City in regards to ensuring compliance with both State and Federal regulations for the health and safety of the Citizens of the City of Newark and other visitors who patronize businesses within the City; and,

WHEREAS, concerns regarding the significant health and safety issues caused by the sale of cartridge-based electronic nicotine delivery systems (or ENDS) products and other ENDS products which have not received premarket authorization from the Food and Drug Administration (FDA) under section 910 of the Federal Food, Drug and Cosmetic Act (FD & C Act) (21 U.S.C. 387 through 387u) warrant monitoring by the City and the Licking County Health Department to ensure compliance with both State and Federal Law; and,

WHEREAS, the Ohio Legislature passed ordinance R.C. 9.681 which went into effect April 24, 2024, prohibiting the regulation of tobacco and alternative nicotine products by cities under the Home Rule doctrine; and,

WHEREAS, multiple Ohio cities have sued the State of Ohio challenging the constitutionality of the State law claiming it violates a municipality's right to exercise Home Rule pursuant to the Ohio Constitution Article XVIII, Section 3; and,

WHEREAS, Judge Serrott of the Franklin County Court of Common Pleas in the City of Columbus, et al., vs. State of Ohio, et al, issued a declaratory judgment that R.C. 9.681 is an unconstitutional infringement on the rights of the Plaintiff municipalities to exercise their right to Home Rule pursuant to the Ohio Constitution Article XVIII, Section 3; and

WHEREAS, the case is now being appealed to the Tenth District Court of Appeals;
and,

WHEREAS, it is requested that this Council vote to amend Part 8, Title Two of the Newark Codified Ordinance with the understanding that enforceability of such ordinance is dependent on the ruling of the Court in the pending matter cited above and will not be enforced unless and until it is deemed lawful; and,

WHEREAS, should the Ohio Court find R.C. 9.681 is in fact constitutional and therefore Home Rule does not apply to such regulations, enforcement of this Ordinance will not occur and action will be taken to repeal said legislation; and,

WHEREAS, this ordinance was considered and addressed by the Safety Committee of this Council who passed this Ordinance on to the full Council for consideration.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF
THE CITY OF NEWARK, COUNTY OF LICKING, STATE OF OHIO, THAT:**

SECTION 1: Part 8, Title Two of the Codified Ordinances of the City of Newark, Ohio Titled Business Regulations is hereby amended to include Section 854 which shall read as follows:

**854.00 MARKETING CARTRIDGE-BASED ELECTRONIC BASED NICOTINE
DELIVERY SYSTEMS (OR ENDS) PRODUCTS AND OTHER ENDS PRODUCTS**

854.01 DEFINITIONS

As used in this section:

- (a) Cartridge-based electronic nicotine delivery systems (or ends) products are a type of ends product that consist of includes, or involves a cartridge or pod that holds liquid that is to be aerosolized through product use. For purpose of this definition, a cartridge or pod is a small, enclosed unit (sealed or unsealed) designed to fit within or operate as part of an electronic nicotine delivery system. An example of products that would not be captured by this definition include completely self-contained, disposable products.
- (b) Ends products include devices, components, and/or parts that deliver aerosolized e-liquids when inhaled. For example, the Federal Food and Drug Administration (FDA) considers vapes or vape pens, personal vaporizers, e-cigarettes, cigalikes, e-pens, e-hookahs, e-cigars, and e-pipes to be ends.
- (c) E-liquids are a type of ends product and generally refer to liquid nicotine and nicotine-containing e-liquids (i.e. liquid nicotine combined with colorings, flavorings, and/or other ingredients). Liquids that do not contain nicotine or other material made or derived from tobacco, but that are intended or reasonably expected to be used with or for the human consumption of a tobacco product, may

be components of parts and, therefore, subject to FDA's tobacco control authorities.

- (d) Tobacco product means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw product). The term "tobacco product" does not mean an article that under the Federal Food, Drug, and Cosmetic Act (FD&C Act) is a drug (Section 201(g) (21 U.S.C 321 (g)(1))), a device (Section 201(h)), or a combination product (Section 503(g) (21 U.S.C 353(g))). Section 201 (rr) of the FD&C Act.

854.02 MARKETING CARTRIDGE-BASED ELECTRONIC BASED NICOTINE DELIVERY SYSTEMS (OR ENDS) PRODUCTS AND OTHER ENDS PRODUCTS THAT HAS NOT OBTAINED PREMARKET AUTHORIZATION

No person shall market any cartridge-based electronic nicotine delivery systems (or ENDS) products and other ENDS products that has not obtained premarket authorization from the Food and Drug Administration (FDA) under Section 910 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 387 through 387u).

854.03 INSPECTIONS

The Licking County Board of Health shall conduct annual inspections of all wholesale and retail facilities that market ENDS products.

854.04 ENFORCEMENT

This chapter shall be enforced by the Licking County Board of Health and its designee(s). The Health Commissioner and his or her designee(s), and the Mayor and his or her designee(s) shall have concurrent jurisdiction to enforce all provisions of this chapter.

854.05 SEVERALBILITY

If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, the invalidity shall not affect the other provisions of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared severable.

854.99 PENALTY

(a) Upon the receipt of a first report that a proprietor of a public place or place of employment has violated any provision of Section 854.02 of this chapter, the Licking County Board of Health shall issue a warning letter to the proprietor. Thereafter, the penalties contained in subsection (b) here of shall apply.

(b) Whoever violates any provision of Section 854.02 of this chapter is guilty of a minor misdemeanor on the first offense; on a second offense, the person is guilty of a misdemeanor of the fourth degree; for a third or subsequent offense, the person is guilty of a misdemeanor of the third degree.

(c) Strict liability is intended for a violation of Section 854.02 of this chapter.

(d) All fines and costs collected as a result of enforcement of section 854.02 of this chapter, shall be paid directly to the enforcing agency to fund future enforcement and education.

SECTION 2: This Ordinance shall not be enforced unless and until it is deemed lawful by either a Court of competent jurisdiction or by an act of the Ohio Legislature.

SECTION 3: This legislation shall become effective at the earliest time permitted by Article 4.07 of the Charter of the City of Newark, Ohio

ADOPTED this _____ day _____, 2025.

PRESIDENT OF COUNCIL

ATTEST: _____
Clerk of Council

Date filed with Mayor: _____

Date approved by Mayor: _____

JEFF HALL, MAYOR

Approved as to form: _____
Tricia M. Moore
Director of Law