



Programs & Services Committee Agenda

City of Newton **In City Council**

SPECIAL MEETING

Monday, March 7, 2016

Following City Council Meeting
Council Chamber

Items Scheduled for Discussion:

- #31-15 Proposing an ordinance to limit leaf blower use**
PROGRAMS & SERVICES COMMITTEE proposing an ordinance to limit the use of leafblowers. [01/26/15 @ 2:20 PM]
- #31-15(2) Amend Noise Ordinance restrictions for yard maintenance equipment**
THE PROGRAMS & SERVICES COMMITTEE requesting to amend *Chapter 20-13, Noise Control*, relative to time restrictions on the use of yard, garden or grounds maintenance equipment. [03/19/15 @ 12:14 PM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, *please contact Jini Fairley, at least two days in advance of the meeting: jfairley@newtonma.gov, or 617-796-1253. For Telecommunications Relay Service dial 711.*

Items Not Scheduled for Discussion at This Meeting:

- #56-16 Ordinance amendment to add statutory references to policy on housing practices**
COUNCILOR HESS-MAHAN requesting an amendment to Chapter 12, Section 50(b) *Policy of the city regarding housing practices*, to add statutory references to Title VI of the Civil Rights Act of 1964; the Americans with Disabilities Act; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act; and any other applicable state or federal laws that were inadvertently omitted from the current ordinance. [02/08/16 @ 1:51 PM]
- #37-16 Resolution to state officials requesting a carbon fee**
COUNCILOR NORTON requesting a Resolution to state officials calling for a fee on carbon to curb climate change. [01/22/16 @ 10:34 AM]
- #36-16 Resolution to state officials supporting fossil fuel divestment**
COUNCILOR NORTON requesting a Resolution to state officials supporting fossil fuel divestment. [01/22/16 @ 10:34 AM]

Referred to Programs & Services and Public Facilities Committees

- #27-16 Updates from the Administration on the renovations at the Aquinas site**
PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES requesting that the School Department and/or Executive Department provide updates on removal of asbestos and other toxic materials that were identified at the Aquinas site, the scope and timing of window replacement in particular, and renovations that may be necessary to facilitate short and long-term plans for uses and operations at the site. [01/10/16 @ 1:14 PM]
- #10-16 Polling location change from Memorial Spaulding School to Temple Beth Avodah**
NEWTON ELECTION COMMISSION requesting the Newton City Council approve a change of polling location for Ward 8, Precinct 2 from the Memorial Spaulding School to Temple Beth Avodah at 45 Puddingstone Lane, Newton beginning with the September 2016 State Primary Election. [12/17/15 @ 5:21 PM]

Referred to Programs & Services, Public Facilities and Finance Committees

- #357-15 Request for CPA funding for the Newton Highlands Playground**
COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of two million five hundred thousand dollars (\$2,500,000) from the Community Preservation Fund's open space and general reserves or fund balance to the Parks & Recreation Department, for the rehabilitation of the Newton Highlands Playground at Winchester and Dedham Streets, as described in the proposal submitted to the Community Preservation Committee in November 2015. [12/15/15 @ 12:32 PM]

Referred to Programs & Services and Public Safety & Transportation Committees

- #312-15 Update from Health Department on opiate overdose epidemic**
ALD. COTE, HARNEY AND NORTON, requesting a review and discussion of the opiate overdose epidemic including an update from the Health Department appraising the board on the current situation to include comparative statistics from previous years as to the number of opiate overdoses handled by first responders. In addition, what is being done immediately to take this on and what support can the Board provide.

Referred to Finance and Other Appropriate

- #288-15 Submittal by the Mayor of the FY17 Capital Improvement Plan**
HIS HONOR THE MAYOR submitting the FY 2017-FY 2021 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/01/15 @ 1:53 PM]

Referred to Programs & Services and Public Facilities Committees

- #201-15 Discussion of the condition of the Kennard Estate on Dudley Road**
ALD. SANGIOLO requesting a discussion with the Commissioner of Public Buildings, the Commissioner of Parks and Recreation, and the Executive Department regarding the condition of the property located at 246 Dudley Road (Kennard Estate) and how much, if any, repairs and upgrades will be needed as the City relocates the Parks and Recreation Department to that location. [09/01/15 @ 4:00 PM]

Referred to Programs & Services and Public Facilities Committees

- #141-15 Discussion on tracking the gas utility infrastructure in Newton**
ALD. BROUSAL-GLASER, SANGIOLO, HESS-MAHAN, COTE, NORTON AND ALBRIGHT requesting a discussion with *the Director of Urban Forestry*, a representative of the Department of Public Works and a representative of the Law Department about tracking and improving the condition of the gas utility infrastructure in Newton, new state statutes governing infrastructure repairs, coordination of increased repair work with city operations, the status of negotiations with National Grid to compensate for tree deaths resulting from gas leaks, and the possibility of creating a utilities working group to monitor progress on these and related issues.
05/26/15 @ 2:53 PM]

Referred to Public Facil, Programs & Services and Public Safety & Trans Committees

- #46-15 Discussion of parking options and permits at municipal & school parking lots**
ALD. JOHNSON & CICCONE, requesting a discussion with the Commissioner of Department of Public Works and the School Department to determine and discuss parking options including use of school properties based on the current municipal parking lot programs including the issuance of permits. [02/11/15 @1:35 PM]

#483-14 Resolution to promote cooperative programs with food establishments
PROGRAMS & SERVICES COMMITTEE proposing a RESOLUTION to promote a cooperative program with food establishments in the City, the Newton-Needham Chamber of Commerce, the Economic Development Commission, the Director of Economic Development and members of the Board of Aldermen, to find opportunities for these establishments to provide their food services for events in the City. [12/02/14 @ 3:56 PM]

#377-14 Discussion of proposed changes of use of the Senior Center
THE PROGRAMS & SERVICES COMMITTEE requesting a discussion with the Director of Senior Services, the Council on Aging and the Executive Department relative to changes in the use of the Senior Center at 345 Walnut Street. [10/16/14 @ 5:43 PM]

#216-14 REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES
Ordinance amendment to require certificate of habitability with change of tenant
ALD. HESS-MAHAN, ALBRIGHT, BAKER, CROSSLEY, NORTON AND SANGIOLO proposing the following amendments to Chapter 12 Health and Human Services of the Revised Ordinances to:

- require owners of dwellings requiring a Certificate of Habitability under Section 12-1 and real estate agents/brokers who receive compensation in connection with the particular real estate transaction to notify the Commissioner of Health and Human Services whenever an apartment, tenement, or room in a lodging house is vacated by the occupant or when an area in an existing building is converted to a condominium prior to being reoccupied by a new tenant, lodger or occupant;
- require educational institutions to disclose addresses of undergraduates living off-campus in Newton;
- require a fee for certification; and
- impose a fine for violation of these provisions. [05/14/14 @11:51 AM]

FINANCE VOTED NO ACTION NECESSARY 7-0 12/14/15

#119-14 REFERRED TO PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES
Discussion of plans to address ADA compliance of city properties
ALD. ALBRIGHT AND CROSSLEY requesting discussion with the Inspectional Services Department to explain the development of short and long term plans to identify and correct buildings, sidewalks, playgrounds, etc., that do not conform to American Disability Act (ADA) standards. The discussion should include information on how improvements will be incorporated into the Capital Improvement Plan or if less than \$75,000 into a comprehensive budget plan to correct ADA deficiencies. [03/12/14 @ 4:18 PM]

#398-13 Discussion of complementary regulations relative to Marijuana Dispensaries
ALD. BAKER & DANBERG requesting a discussion of a possible ordinance, regulations or otherwise, to complement zoning regulation of any licensed Registered Marijuana Dispensaries to respond to any secondary impacts so as to make the operation of such dispensaries as successful as possible. [10/28/13 @ 10:00 AM]

#34-13 Ordinance to ban polystyrene
ALD. DANBERG, ALBRIGHT, BLAZAR, RICE, LINSKY AND CROSSLEY requesting a prohibition on polystyrene-based disposable food or beverage containers in the City of Newton if that packaging takes place on the premises of food establishments within the City. [01/03/13 @ 11:01 AM]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

#257-12 Recommending review of fees and fines
RECODIFICATION COMMITTEE recommending (1) review of the Fees, Civil Fines/Non-Criminal Disposition contained in Chapter 17 LICENSING AND PERMITS GENERALLY and Chapter 20 CIVIL FINES/NON-CRIMINAL DISPOSITION CIVIL FINES to ensure they are in accordance with what is being charged and (2) review of the acceptance of G.L. c. 40 §22F, accepted on July 9, 2001, which allows certain municipal boards and officers to fix reasonable fees for the issuance of certain licenses, permits, or certificates.

#229-12 Recommending review of Council Rules relative to review of draft ordinances
RECODIFICATION COMMITTEE recommending a review and possible amendment to the *Board of Aldermen Rules & Orders 2012-2013* relative to review of draft ordinances by the Law Department.

REFERRED TO PROG & SERV, PUB. FACIL. AND FINANCE COMMITTEES

#312-10 Discussion of space needs in Newton public schools
ALD. LENNON, LAPPIN, SCHNIPPER, SANGIOLO requesting a discussion with the School Committee on its plans to address space needs in the Newton public schools. [10/27/10 @11:07 AM]

Respectfully Submitted,

John B. Rice, Chair

#31-15 (LEAF BLOWERS)

DRAFT REDLINE FOR DISCUSSION PURPOSES 02/29/2016

(Added language underscored; deleted language struck through)

ARTICLE II.

NOISE

Sec. 20-13. Noise control.

(a) This ordinance may be cited as the "Noise Control Ordinance of the City of Newton."

(b) *Declaration of findings and policy.* Whereas excessive sound is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive sound may be substantially abated; and, whereas the people have a right to and should be ensured an environment free from excessive sound that may jeopardize their health or welfare or safety or degrade the quality of life; now therefore it is the policy of the City of Newton to prevent excessive sound which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(c) *Scope.* This ordinance shall apply to the control of all sound originating within the limits of the City of Newton except as follows:

- (1) the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work or in training exercises related to emergency activities; and
- (2) all snow clearance activities; and
- (3) any program or activity supervised by the parks and recreation department of the city in effect and as it exists on June 1, 1983.

(d) *Definitions.* For the purposes of this ordinance the following words and phrases shall have the meanings respectively ascribed to them by this section:

Construction and demolition: Any excavation, highway construction, land development or land clearing work, or the erection, demolition, alteration, repair, or relocation of any building or structure, which uses powered equipment such as backhoes, trucks, tractors, excavators, earth moving equipment, compressors, motorized, or power hand tools, manual tools, or equipment of a similar nature as well as two-way radios or other communication equipment; or use of any equipment for recycling, screening, separating, or any other processing of soil, rocks, concrete, asphalt or other raw material.

Electronic devices: any radio, tape recorder or player, television, phonograph, public address system, loudspeaker, amplified musical instrument or any other similar device, except two-way communication radios.

Emergency: any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work: any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR): the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

#31-15 DRAFT REDLINE FOR DISCUSSION PURPOSES (11/6/2015)

§ 20-13 NEWTON ORDINANCES — CIVIL FINES AND MISCELLANEOUS OFFENSES § 20-13

Leaf blower: any portable motorized device, whether carried or pushed, whether powered by gasoline or other fuel, electricity or battery, used in any landscape or property construction or maintenance activity, for the purpose of blowing, dispersing, vacuuming, redistributing, or removing dust, dirt, leaves, grass or plant clippings, litter or other debris.

Motorcycle: any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters, minibikes, and mopeds.

Motor vehicles: any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.

Noise pollution: a condition caused by a noise source that increases noise levels 10dB(A) or more above background noise level, except that if the noise source produces a tonal sound, an increase at 5dB(A) or more above background noise level is sufficient to cause noise pollution.

Tonal sound: any sound that is judged by a listener to have the characteristics of a pure tone, whine, hum or buzz.

(e) *Noise Pollution prohibited.*

- (1) No person shall willfully, negligently, or through failure to provide necessary equipment or facilities or to take necessary precautions permit the establishment or continuation of a condition of noise pollution caused by a noise source (other than a dog or bird) owned, leased, kept, or controlled by such person, or caused by any activity of such person.
- (2) When the offending noise source is located in public spaces, noise measurements shall be made at, and noise pollution determinations made in relation to, any location a passerby might reasonably occupy. When the offending noise source is located on private property, noise measurements shall be made at, and noise pollution determinations made in relation to, the boundary line of the property within which the offending source is located, or as close thereto as feasible.
- (3) All noise level measurements made pursuant to subsection (e) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

(f) *Time Restrictions.*

- (1) Notwithstanding the provisions of subsection (e) and subject to the maximum noise levels listed in subsection (g), the generation of any noise from all electric motors and/or internal combustion engines employed in yard, garden, or grounds maintenance is prohibited except during the following time periods:
 - (A) Between 7:00 a.m. and 8:00 p.m. on weekdays; or
 - (B) Between 9:30 a.m. and 8:00 p.m. on Saturdays, Sundays and legal holidays as established in section 2-26 of these revised ordinances.
- (2) Notwithstanding the provisions of subsection (e) and subject to the maximum noise levels listed in subsection (g), the generation of any noise from construction and demolition activity is prohibited except during the following time periods:

#31-15 DRAFT REDLINE FOR DISCUSSION PURPOSES (11/6/2015)

§ 20-13 NEWTON ORDINANCES — CIVIL FINES AND MISCELLANEOUS OFFENSES § 20-13

(A) Between 7:00 a.m. and 7:00 p.m. on weekdays; or

(B) Between: 8:00 a.m. and 7:00 p.m. on Saturdays;

(C) Generation of any noise from construction and demolition activity is prohibited at any hour on Sundays and legal holidays as established in section 2-26 of these revised ordinances, except by permit issued in accordance with subsection (h)(1).

(3) All public address loudspeakers, either mobile or stationary, shall be prohibited from operating every evening from 9:00 p.m. until 7:00 a.m. the following morning.

(4) No automobile, motorcycle, truck or vehicle-mounted refrigeration equipment or other motorized vehicle shall be left running when not in traffic, within three hundred (300) feet of any dwelling, hotel or residence, for a period of greater than five (5) minutes.

(5) Between the hours of midnight and 6:00 a.m. deliveries and pick-ups for commercial or business purposes are prohibited within 300 feet of any dwelling within a residential zone excepting deliveries to such dwellings, deliveries of gasoline to gasoline stations, deliveries or pick-ups at state or federal governmental offices and any other commercial or business delivery or pick-up operation that does not increase noise levels 5dB(A) or more above background noise level. For purposes of this subsection, "deliveries" and "pick-ups" shall include the loading and unloading of a vehicle.

(6) Between the hours of 7:00 p.m. and 7:00 a.m. trash collection shall be prohibited within five hundred (500) feet of any dwelling.

(7) Between the hours of 11:00 p.m. and 7:00 a.m. no person or persons shall disturb the peace by causing or allowing to be made any unreasonable or excessive noise, including but not limited to such noise resulting from the operation of any electronic device, or from the playing of any band or orchestra, or from the making of excessive outcries, exclamations, or loud singing or any other excessive noise by a person or group of persons, provided however, that any performance, concert, establishment, band group or person who has received and maintains a valid license or permit from any department, board, or commission of the City of Newton authorized to issue such license or permit shall be exempt from the provisions of this section. Unreasonable or excessive noise for the purposes of this section shall be defined as 5dB(A) or more above background level when measured not closer than the lot line of a residential lot or from the nearest affected dwelling unit.

(g) *Maximum Noise Levels.* Notwithstanding the provisions of subsections (e)(1) and (e)(2), the following are the maximum noise levels that are permitted for the specified purposes:

Maximum noise level dB(A) permitted:

(1) *Vehicles*

Vehicle Class Stationary or Moving

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§ 20-13 NEWTON ORDINANCES — CIVIL FINES AND MISCELLANEOUS OFFENSES § 20-13

All vehicles over 10,000 lbs. GVW
or GCWR 86

All Motorcycles 82

Automobiles and light trucks..... 75

Noise measurements shall be made at a distance of fifty (50) feet from the closest point of pass-by of a source or fifty (50) feet from a stationary vehicle.

(2) *Construction and demolition.*

The cumulative noise level of all construction and demolition on one site at any one time shall not exceed 90dB(A). No individual piece of equipment shall exceed a maximum noise level of 90 dB(A). If noise barriers are used that effectively shield nearby areas from a condition of noise pollution, the following devices shall be exempt from the maximum noise level limitations: jackhammers; pavement breakers; pile drivers; and rock drills.

Maximum noise level dB(A) permitted:

Backhoe, bulldozer, concrete mixer, dump truck, loader, paver, pneumatic tools, roller, scraper 90

Air compressor 85

Generator 90

Electric drills, sanders, saws (except chainsaws) or other power tools of all types, whether hand held or otherwise 75

Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever distance is less.

(3) *Yard, Garden, or Grounds Maintenance Equipment**Maximum noise level dB(A) permitted:*

Commercial Chipper, 3 1/2 inch or greater limb capacity (running at full speed but not chipping) 90

Commercial truck-mounted leaf
vacuum 90

All other equipment, including home
tractor, ~~leaf blower~~, lawn mower
or trimmer 65

#31-15 DRAFT REDLINE FOR DISCUSSION PURPOSES (11/6/2015)

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Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever distance is less.

- (4) *Tonal Sound Corrections.* When a tonal sound is emitted by a noise source specified in subsections (g)(1), (g)(2) and (g)(3) herein, the limit on maximum noise levels shall be 5dB(A) lower than as specified in subsections (g)(1), (g)(2) and (g)(3).
- (5) *Maximum Noise Levels for HVAC systems.* No person shall operate any air conditioning, refrigeration or heating equipment for any residence or other structure or operate any pumping, filtering or heating equipment for any pool or reservoir in such manner as to create any noise which would cause the noise level on the premises of any other occupied property or if a condominium, apartment house, duplex, or attached business, within any adjoining unit, to exceed the background noise level by more than 5 dB(A). This provision shall not apply, however, to periodic or emergency maintenance or testing of such equipment reasonably necessary to maintain such equipment in good working order. Noise measurements and noise pollution determinations shall be taken in accordance with subsections (e)(2) and (e)(3).
- (6) *Alternative Measurement Procedures.* If it is not possible to make a good noise level measurement at the distance specified in subsections (g)(1), (g)(2) and (g)(3), measurement may be made at an alternate distance and the noise level subsequently calculated for the specified distance. Calculations shall be made in accordance with established engineering procedures.
- (7) All noise-level measurements made pursuant to subsection (g) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

(h) *Restrictions on use of leaf blowers.* Notwithstanding the provisions of sections 20-13 (f) and (g), no person, including any City employee or contractor, shall use or operate a leaf blower within the City of Newton from May 15 through September 15 or from December 15 through March 1 in each year. At all other times leaf blowers may be operated subject to the following provisions:

(1) Permitted hours of use. Leaf blowers may be operated only during the following times:

Monday – Friday: 8:00 a.m. – 5:30 p.m.

Saturday: 9:30 a.m. – 5:30 p.m.

Sundays and legal holidays: prohibited except for operation by a resident of the property on which the leaf blower is operated between 9:30 a.m. and 5:30 p.m.

(2). Only leaf blowers meeting the following criteria are permitted for use:

A. Leaf blowers must be manufactured after January 1, 2005 for EPA Class 4 engines and after January 1, 2008 for EPA Class 5 engines;

B. Leaf blowers must bear an affixed manufacturer's label indicating the model number of the leaf blower;

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C. Leaf blowers must bear an affixed manufacturer's label documenting a noise rating of 65 dB(A) or less; and

D. Leaf blowers may only be used with any muffler, full extension tube and sound attenuating devices supplied by the manufacturer of the leaf blower.

(3) No more than one leaf blower may be used on any lot of 10,000 square feet or smaller. One additional leaf blower may be used for each additional 10,000 square feet or portion thereof comprising one lot.

(4) During times of emergency caused by a storm or other special circumstance, the Mayor or his designee may temporarily suspend application of this section for purposes of cleaning up from such storm or other special circumstance.

(5) The Mayor may grant, on a case by case basis, a permit for exemption from all or a portion of this section in accordance with the provisions of section 20-13 (i).

(6) Any commercial landscaper with two or more employees must register with the city clerk on such form as the city clerk may provide prior to the operation of any leafblower within the City of Newton. Such registration shall be renewed annually. The city clerk may charge a reasonable fee for registration and annual renewal. The registration requirement shall take effect on September 1 following passage of this section.

~~(h)~~ *Permits for exemptions from this ordinance and for extensions of time to comply with this ordinance.*

- (1) The mayor or his designee may grant a permit for any activity otherwise forbidden by the provisions of this ordinance upon a determination by the mayor or his designee that compliance in the conduct of such activity would cause undue hardship on the person or persons conducting such activity or on the community, taking into account: (i) the extent of noise pollution caused by not requiring such compliance; and (ii) whether reasonable efforts have been made to abate the noise. The mayor or his designee shall establish appropriate procedures for the processing of requests for such permits, including such hearings as the mayor or his designee deems appropriate. In granting any such permit, the mayor or his designee may impose such appropriate conditions as he deems necessary pursuant to this section. Copies of all such permits shall be filed with the clerk of the board of aldermen promptly after issuance. Promptly after issuance, copies of all such permits shall be filed with the clerk of the board of aldermen and to each ward alderman for the affected ward.
- (2) The mayor or his designee may extend to a specified date the time for compliance with this ordinance in the case of any particular activity with respect to which a determination is made that such extension is necessary to provide a reasonable opportunity for such activity to be brought into compliance. No such extension shall be granted which has the effect of exempting such activity from compliance with this ordinance. The mayor or his designee shall establish appropriate procedures for the processing of requests for such extensions of time, including such hearings as the mayor or his designee deems appropriate.

~~(i)~~ *Judicial Review.* Any person aggrieved by the grant or denial of a permit pursuant to subsection (h)(1) or an

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extension of time pursuant to subsection (h)(2) may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

~~(j)~~ *Penalties.* Violation of any of the provisions of this section shall constitute a misdemeanor and any person, upon conviction of such violation, shall be fined an amount not to exceed three hundred dollars (\$300.00). Each day that such violation continues shall be considered to be a separate offense.

~~(k)~~ *Non-criminal disposition.* In addition to the penalties set forth in subsection (j), where non-criminal disposition of specified sections of this ordinance by civil fine has been provided for in sections 20-20 and 20-21 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violations may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in Sections 20-21(c) and 20-21(d).

~~(m) In the event the person in violation of section 20-13 (h) pertaining to leaf blower use is a contractor, the property owner shall be notified of the violation and of any warning or other enforcement issued to the contractor.~~

~~(n)~~ *Severability.* If any provision(s) of this ordinance or the application of such provision(s) to any person or circumstances shall be held invalid, the validity of the remainder of this ordinance and the applicability of such provision to other persons or circumstances shall not be affected thereby. (Ord. No. R-331, 6-20-83; Ord. No. T-62, 12-4-89; Ord. No. T-200, 12-16-91; Ord. No. V-286, 3-6-00; Ord. Z-32, 7-14-08; Ord. No. Z-78, 02-22-11; Ord. No. Z-104, 04-02-12)

Cross reference—Sounding warning devices on motor vehicles, § 19-72; noise by hawkers and peddlers, § 17-26.

Secs. 20-14—20-19. Reserved.

Sec. 20-51. Depositing of litter.

(a) No person shall in any manner place or deposit or cause to be placed or deposited on any street or sidewalk, or on any park, playground or other public grounds, or upon any other premises, without the consent of the owner thereof, any noxious substance or liquid or any discarded articles or materials or any rubbish or litter of any kind except in containers set out for collection in accordance with the provisions of Chapter 11 of the Revised Ordinances.

(b) No person shall by operation of a leafblower or in any other manner place or deposit or cause to be placed or deposited on any street or sidewalk, or on any park, playground or other public grounds, or upon any other premises, without the consent of the owner thereof, any yard waste, including dirt, leaves, grass clippings, trimmings from trees or shrubs, or wood chips except in containers set out for collection in accordance with the provisions of Chapter 11 of the revised ordinances.

(Rev. Ords. 1973, § 14-2; Rev . Ords. 1995, § 20-2)

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

(d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

.....PENALTY

() Warning \$0.00

Sec. 3-29. Removal and disposal of canine waste.

() Any Offense..... \$50.00

Sec. 20-13. Noise Control

() First offense in calendar year..... Warning

() Second offense in calendar year \$100.00

() Third offense in calendar year \$200.00

() Fourth or subsequent offense in calendar year \$300.00

Sec. 20-51(b) Depositing of litter – yard waste

() First offense in calendar year..... Warning

() Second offense in calendar year \$100.00

() Third offense in calendar year \$200.00

() Fourth or subsequent offense in calendar year \$300.00

Sec. 26-8. Removal of snow and ice from sidewalks in certain districts.

Leaf Blower Summary for City Council

Submitted by Councilor Alison Leary, Vice Chair, Programs & Services Committee

Although specific clinical studies are lacking, leaf blower noise is recognized as a source of adverse health effects. American Lung Association: Use hand-powered or electric lawn care equipment rather than gasoline-powered. Two-stroke engines like lawnmowers and leaf or snow blowers often have no pollution control devices

Leaf Blowers are loud often exceeding the noise level of 65 decibels. In fact, most leaf blowers are louder than 85dB and some are up to 1000x noisier.

Current Draft Ordinance can be found at :

<http://www.newtonma.gov/civicax/filebank/documents/73749>

Draft ordinance includes:

Hours of operation:

Monday-Friday 8:00am to 5:30pm

Saturday 9:30am to 5:30pm

Sundays and Legal Holidays Resident use only 9:30am to 5:30pm

Seasonal ban on operation of leaf blowers:

May 15th to September 15th and December 15th to March 1st

Other restrictions:

One leaf blower per 10,000 square feet.

Mayor may grant exemptions from leaf blower ordinance during emergencies.

Leaf blowers must be manufactured after January 1, 2005 for EPA Class 4 engines and after January 1, 2008 for EPA Class 5 engines;

Leaf blowers must bear an affixed manufacturer's label indicating the model number.

Registration

The Committee is recommending that a registration component be required for commercial operators (any entity or organization that employs 2 or more employees using leaf blower equipment). This is important for both improving communication and with aiding in compliance. The registration process will require that contractors using leaf blower equipment in Newton sign off that they have read the ordinance and will follow best practices which includes, among other things, not blowing leaves and other debris into the street, adjacent property or conservation/public land, and use the lowest possible speed/throttle to accomplish a task.

Exemptions/Waivers

To address the needs of large property owners, the Committee is recommending use of the current waiver and exemptions provision in the noise ordinance, however, the Committee has discussed the desire that certain stringent criteria be used in order to allow those waivers including why other types of equipment can't do the job and what type of mitigation will be put in place to minimize impacts on abutters.

Best practices include:

General Courtesy
Sound Reduction
Reduction of Dust/Particulate Matter
Environmental Use
Operator training

See Cambridge's model:

<https://www.cambridgema.gov/theworks/ourservices/leafblowing/commercialoperators/commercialoperationsbestpractices>

Cambridge has operational plans that are managed by the City in order to mitigate the effects on the neighbors of large parcels; private and public schools, parks, and golf courses, that model could be followed in Newton.

Summary of Testimony from Major Stakeholders

Commissioner DeRubeis, Parks & Recreation

- Partial ban will have an impact on maintenance, forestry and beautification.
- The City uses blowers on pave surfaces to clear village centers of trash/debris. Blowers used as early as 4am. Four staff clean 18 linear miles of sidewalk by backpack blowers.\
- See full statement attached

Captain Christopher Marzilli, Newton Police Department

- Police would like as simple an ordinance as possible
- Bans with specific dates and times simplest to enforce
- Enforcement currently complaint driven only
- Active enforcement would require more meters and personnel under current ordinance
- See full statement attached

Steven Buchbinder representing Brae Burn Golf course

- Amendments include:
 - Eliminating the summer seasonal ban
 - A start time of 7am on weekdays (instead of 8am)

- A Saturday start time of 9am. (instead of 9:30am)
 - One leaf blower per 7,500 square feet (instead of 10,000 square feet).
 - Increasing the allowable decibel level for the noise ordinance to 77 dB (from current 65 dB) and keep the dB level at 65 during the summer months
 - Property owners notified of violations
- Mr. Buchbinder remarked that a lack of recognition of current laws and poor communication exacerbate the problems with leaf blower use. Education and outreach can help alleviate leaf blower complaints.
- Proposal is that all landscapers/contractors using leaf blower equipment register with the City for an annual fee of \$100.00; upon registration a sticker visible on windshield is issued. The registration process would include a best practices training on the use of leaf blowers and members of the ad hoc working group are prepared to have a seminar at which best practices would be discussed. Exemption for large property owners would require a comprehensive operations plan with the City similar to what is used in Cambridge; this allows more flexibility that addresses needs of these larger institutions.

Faith Michaels –Faithful Flowers landscape Design

- Newton Leaves: represents the interests of professional landscapers and large landowners including Boston College, golf courses and the Newton Cemetery Corporation www.newtonleaves.org
- Oppose any outright bans on leaf blower equipment because it restricts the ability to properly maintain public and private properties.
- Problem with a summertime ban; still a need to clean/remove;
 - Grass clippings and tree droppings
 - Tennis courts, parking lots, gutters and turf fields.
 - Leaf blowers offer the convenience of a quick clean up.
- Argues that machines of 67dB's or less are not powerful enough for heavy leaves in the spring and fall, and the electric blowers are not an adequate replacement for the gas powered machines.
- Newton Leaves would implement best practices for commercial landscapers (could also be pertinent to residential use) and offer training sessions and information, including a pamphlet in multiple languages about the city's regulations and recommended best practices.
- They would make available a list of registered and insured contractors who engage in best practices.
- Newton police liaison would be involved in best practices enforcement registration of contractors and inspection of equipment.

Jeanne Leveque-Boston College

- Leaf blowers used year round at B.C., and are used for removal of salt, debris, sand and light snow. They are also used for clean ups in parking garages, stadiums and parking lots.
- Large property owners of 2 acres or more eligible to file operation plan with the mayor's office or designee. It would NOT allow an exemption from maximum noise levels.

Jamie Banks, Executive Director of Quiet Communities

- If the City of Newton could consider a transition to greener methods it could be very beneficial as it has been in other places. A clean, quiet environment would be wonderful and costs may go down as well. More and more customers desire quiet landscapers and it could be a very competitive business model for those who want to differentiate themselves.

Sean McLaughlin, General Manager of the Brae Burn Country Club

- Primary leaf blower use on greens
- Blowers are use for 3-4 days in August
- Avoid use on weekends as much as possible, and restrict use to the afternoon

Greg Reibman NNCC

- Proposed regulations go too far
- Maintains sweeping not practical on hard surfaces.
- Suggests that the City give best practices and self policing efforts a chance and address the abusers first. Recommends 1 leaf blower per 7,500 Sq ft.

Eco Quiet Lawncare George Carrette; Gasoline free, organic and electric lawn care.

- All of the ion battery equipment is under 65dB.
- The electric leaf blowers are more powerful and quieter than gasoline powered leaf blowers.
- Rapidly improving technology making electric equipment both more practical and cheaper to use.
- Upfront investment in the technology garners long-term savings.
- Mulching lawnmower excellent alternative and can complete a half acre in about an hour and a half. Clients then use the mulch for their garden beds and avoid having to haul leaves off the property. The customers save money by not having to pay for mulch.

Kenneth Glusman

- Maintains that only a complete ban is effective due to difficulty with enforcement- however, as an alternative supports the following;
- Supports the use of electric equipment only.
- Limit one leaf blower per 10,000 sq ft lot. In addition require the blowers to operate 100 ft. apart
- Do not allow leaf blowers to be used on hard public surfaces. Blowing on the streets and sidewalks should be prohibited.
- Keep decibel level to 65.
- The property owner gets a written notice when the contractor is out of compliance with leaf blower ordinance.
- Any landscaper in violation of the leaf blower ordinance 3 times in a 12 month period would be barred from performing landscaping services in Newton for one year.
- Skeptical of large price increases predicted by contractors if leaf blower use is restricted or seasonally banned. Cites evidence from communities (CA) where leaf blower use has been restricted, no large increases in costs have been the result.
- The amendments suggested by Mr. Buchbinder would solve the enforcement problem because there would be almost nothing to enforce. If you are looking to cut down on complaints, I can assure you than a 77 dB rule is not what you want.
- We need active enforcement. Educate on the alternatives to blowers and actively encourage a transition away from leaf blowers. Manual rakes and brooms can be efficient. Businesses can and will adapt.
- Contractors-Newton Leaves –Offer mulching leaves instead of leaf blower use and educate clients that leaf mulch improves lawns and keeps costs down by keeping tipping fees down and require less fertilizer.
- Banning/reducing leaf blower use yields tremendous and very valuable quality of life improvements. This is one reason the City banned the burning of leaves.

POLICE DEPARTMENT COMMENTS 03/18/15 PROGRAMS & SERVICES MEETING

#8-15 ALD. HESS-MAHAN, NORTON, SANGIOLO AND LEARY requesting discussion with the Law Department and Inspectional Services Department regarding enforcement of the noise ordinance as it pertains to leaf blowers. [12/15/14 7:44 PM]

ACTION: **NO ACTION NECESSARY 7-0-1 (Ald. Sangiolo abstaining)**

NOTE: Ald. Hess-Mahan explained that this item was docketed because there seemed to be a difference of opinion in the interpretation of the noise ordinance relative to leafblowers. He said the intention was that there would be a maximum sound limit for leafblowers (65dB) which should be measured without regard to background noise. He has heard that instead, background noise was being taken into consideration by the Police Dept. and the Inspectional Services Department (ISD). The rest of the ordinance in regard to noise pollution provided for the measurement of noise generated from a host of other sources to be measured against background noise, but leafblowers and the other pieces of equipment that were specifically called out in the noise ordinance were not. That is why they were specifically listed. The leaf blower on its own should not be more than 65dB.

Ald. Hess-Mahan explained that cumulative sound was not mathematic. For instance two leafblowers at 65 dB did not equal 130 dB, but in fact equaled 68dB, which was twice as loud as 65dB. This was the problem with the noise ordinance and the way it was being enforced. The way it was currently being measured was wrong. There needed to be a different way to determine a violation other than measuring dB levels – it's too complicated.

Police Department Response

Captain Christopher Marzilli, Patrol Bureau Commander, said that ISD was the lead enforcement agency for the noise ordinance, but after business hours it became the responsibility of the police. Most complaints that the police received were about air conditioning units, trucks running, construction noise, etc. and those were generally at night. Police were trained to use the dB meter to measure those kinds of violations initially, not leaf blowers. There were two officers on the day watch that were trained on the dB meter. If they received a complaint about a leaf blower, they would go to the station to get the meter and head to the site. Usually, by the time they got there the landscaper was gone. Most complaints (and he noted there were not many) were relative to landscaping companies with only a few for individual homeowners. If the leaf blower was still running they would take a measurement of the ambient noise and the machine to get the measurement

Captain Marzilli said that if the Board would like the police to actively enforce the noise ordinance, they would need more personnel and more meters. As it stands, even if an officer were to pass by a landscaper working before or after the allowable time, the officer would not stop to enforce. Some Committee members said that since the ordinance gives discretion to the police for enforcement, an officer could stop and enforce without receiving a complaint particularly if they were not attending to an issue more urgent at the time. Captain Marzilli

stated that the Board would have to speak with Chief Mintz for a policy change as the current policy dictated that noise ordinance enforcement was strictly complaint driven. When asked what would lend itself to the most effective enforcement, the Captain stated that a very simple ordinance would be best. If there was a seasonal or total ban, and/or if only electric leaf blower were allowed, that would be very clear cut and simpler to enforce. Along those lines, he would also like to see one fine for each violation and not a progressive fine system. It would promote more enforcement and was easier to track.

Notice/Education

There was a suggestion in Committee that notice should be sent to homeowners so they understood the ordinance and could relay that information to their landscaping contractors. Perhaps fines should be sent to homeowners and not the contractors. Overall there should be a public education component to tackling this so that everyone was aware of what the ordinance was and clarify the restrictions on time in particular. Marie Lawlor said this would be a more informal educational opportunity as there were no statutory requirements for notice. Residents were presumed to know the law. A noise ordinance reminder for construction can be issued when someone comes to pull a building permit, for instance. Notice could be sent in the tax bill, in the Tab, or on the website for instance.

Follow Up

The Committee concluded that the conversation was very informative and a more clear cut measure needs to be explored. It was suggested that Inspectional Services work with the Law Department on methods of notice and education of the noise ordinance relative to noise for construction and yard work equipment. Captain Marzilli will speak to Chief Mintz and let him know that the Committee expressed interest in more enforcement of before-hours generation of noise, particularly on weekends.

Ald. Hess-Mahan moved No Action Necessary and the Committee voted in favor.

PARKS & RECREATION COMMENTS 12/09/15 PROGRAMS & SERVICES MEETING

#31-15 PROGRAMS & SERVICES COMMITTEE proposing an ordinance to limit the use of leafblowers. [01/26/15 @ 2:20PM]

ACTION: **HELD AND REFERRED TO THE 2016-2017 CITY COUNCIL 7-0**
(Ald. Norton not voting)

NOTE: Ald. Sangiolo explained that this will be the continuing series of comments from various stakeholders in the leaf blower ordinance proposal.

Parks & Recreation

Commissioner of Parks & Recreation, Bob DeRubeis addressed the Committee. He explained that he has been following the progress of the proposals to the ordinance and believes the

partial ban will have an impact on his department in terms of maintenance, forestry and beautification.

Maintenance

In the current proposed ordinance, leaf blowers can be used between September 15 and December 15, which is the heaviest usage for contractors to use leaf blowers for maintenance around the City. The Commissioner explained that the problem, however, is the department continues to move leaves beyond December 15, depending on the weather. There are multiples sites that Parks & Recreation is responsible for that make up 739 acres of land with leaf removal on most of those areas. The contractors are telling the Commissioner that they will have to ramp up their efforts during the allowed window of time, which will require more personnel and will cost more for the City. The extra cost, while not extreme, is not insubstantial.

Commissioner DeRubeis also commented that the crews do not typically get onto the athletic fields for clean up until early April. With last year's severe weather, they were unable to work on the fields until June. And if the weather stays milder past December, they like to keep working on the fields. The proposed date restrictions could have an impact on providing a flexible response to the weather.

Forestry

Marc Welch, the Superintendent of Forestry, told the Commissioner that any work done on a tree from pruning to removal to stump grinding, is followed by the leaf blower for a quicker clean-up. Mr. Welch noted that if he cannot use the blower it would slow down his crews and predicted about a 7-10% loss in production.

Beautification

The Commissioner noted that the area in which his department would feel the most impact would be in the upkeep of the Village Squares. Crews are in the Squares every day and they use blowers every day. If the blowers cannot be used, sweeping and/or raking would take much more time and therefore cost more money. This would also take time away from other beautification projects and they might not get done. A total ban would create exorbitantly higher costs, so a partial ban would not have as high an impact, but would still have a significant impact in this area.

Also, the crews start working in the Squares by 7:00am in order to get the work done before people start coming into the areas. If the hours were changed to 8:30am as proposed in the draft ordinance that would be a significant loss of work time in the early morning hours in the highly populated areas such as village squares, schools and playing fields.

Committee Comments/Questions

Committee members asked what the estimated cost increases might be. Commissioner DeRubeis said he predicted about \$170K increase in costs per year with the majority of the cost attributed to the Village Squares' work. When asked for a breakdown of specific costs,

Commissioner DeRubeis noted that it would mostly be in overtime for about \$100K on villages; leaf removal would be about \$20K; and about \$15K for the forestry operation. The contractors and the City workers use very similar equipment including backpack blowers and some walk-behind blowers. The Committee asked if the Commissioner could provide information on the type of equipment used. The Commissioner submitted a list, which is attached.

A Committee member explained that Cambridge has operational plans that are managed by the City in order to mitigate the effects on the neighbors of large parcels. This might be beneficial for the areas around private and public schools, parks, and golf courses, for example and perhaps that model could be followed in Newton. One of the major goals of this proposal is to decrease the number of noise complaints that are coming in from residents who are bothered so often by leaf blowers. Commissioner DeRubeis said he would familiarize himself with the Cambridge model. He felt that his department could manage that sort of thing and they do have operational plans for schools, etc. and contractors follow those plans. He admitted that perhaps that needed some oversight and some work and he would be very amenable to working with the contractors to make sure some beneficial changes are made to reduce the problems that have been stated during this process. A Committee member said he would like to see some uniformity in how things are managed and best practices applied across the board.

It was asked if the department ever has any complaints about leaf blowers. Commissioner DeRubeis said he had one today, in fact, about contractors blowing leaves into the woods. There have been other complaints about leaves being blown into the river and these are obviously not acceptable practices. He believes it is time to get best practices in writing for new contractors so there are no misunderstandings about what should be done and to remind any contractor that is working on leaf removal.