



Programs & Services Committee Agenda

City of Newton **In City Council**

Wednesday, October 18, 2023

7:00 PM

The Programs & Services Committee will hold this meeting as a virtual meeting on Wednesday, October 18, 2023 at 7:00 pm. To view this meeting using Zoom use this link: <https://newtonma-gov.zoom.us/j/85272051279> or call 1-646-558-8656 and use the Meeting ID: 852 7205 1279.

Items Scheduled for Discussion:

#314-23 Discussion and Possible Creation of Ordinance Regarding Vibration Control Measures

HER HONOR THE MAYOR requesting the discussion and possible creation of an ordinance that would require control measures for construction activities that cause vibrations in both by-right and special permit projects.

#88-22 Request for a study on construction vibration standards

COUNCILORS ALBRIGHT, BAKER, BOWMAN, DOWNS, GREENBERG, HUMPHREY, LAREDO, LEARY, MALAKIE, NORTON, RYAN based on the Washington Place Liaison Committee recommendations, requesting the study, analysis, review of vibration standards related to construction projects as they affect neighboring buildings. The outcome of this analysis could be an amendment to Chapter 20, Sec. 13-22 Noise, to include a vibration section in construction projects.

Respectfully Submitted,
Josh Krintzman, Chair

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the City of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.



RUTHANNE FULLER
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#314-23

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(617) 796-1100

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(617) 796-1113

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(617) 796-1089

E-mail
rfuller@newtonma.gov

September 12, 2023

Honorable City Council
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Councilors:

I respectfully submit this request to your Honorable Council for the adoption of the proposed ordinance requiring control measures for construction activities that cause vibrations.

The intent of the Ordinance is to create vibration control protections that will apply to both by-right and special permit projects within the City that have the potential to cause negative impacts to abutters.

Attached is a memo from the Planning & Development Department with the proposed language crafted in collaboration with various City departments, including the Law, ISD, DPW/Engineering, and Public Buildings Departments.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller
Mayor

NEWTON, MA 02459
CITY CLERK

2023 SEP 12 PM 4:40

RECEIVED



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#314-23

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Barney Heath
Director

MEMORANDUM

To: Mayor Ruthanne Fuller
Jonathan Yeo, Chief Operating Officer

From: Barney Heath, Director of Planning & Development
Jennifer Caira, Deputy Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning

Date: August 10, 2023

Subject: Docket Request for Vibration Control Ordinance

CC: Jonah Temple, Deputy City Solicitor
Josh Morse, Commissioner of Public Buildings
Anthony Ciccariello, Commissioner of Inspectional Services
Lou Taverna, City Engineer

At this time, we would request that the Administration docket the following item:

Mayor Ruthanne Fuller and the Planning Department request a discussion and adoption of a proposed Ordinance requiring vibration control measures for construction activities that cause vibrations.

The intent of the Ordinance is to create vibration control protections that will apply to both by right projects and special permit projects within the City that have the potential to cause negative impacts to abutters. Attached is the proposed language crafted in collaboration with various city departments, including the Law Department.

DRAFT ORDINANCE SECTION 5-23

Sec. 5-23 Regulation of Vibration Monitoring and Protection

- (a) Prior to the issuance of a demolition or building permit for any demolition, site work, or construction activities that require the driving of piles or piers, the removal or alteration of ledge, or significant soil reinforcement or compaction by vibratory roller, applicants shall submit the following to the Commissioner of Inspectional Services:
- (1) A vibration control plan signed and stamped by a licensed and insured geotechnical consultant that determines the scope of preconstruction surveys needed; the basis for that determination; and the recommended vibration level limits and monitoring services to be provided for the duration of the construction activity.
 - (2) Proof of notice to all properties within such scope that a preconstruction survey was offered at no cost to the property owner.
 - (3) A list of all properties that were surveyed.
 - (4) Any other plans or specifications as the Commissioner of Inspectional Services may require.
- (b) The submitted vibration control plan shall be implemented and adhered to during all relevant construction activity. The applicant shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
- (c) Following construction and prior to the issuance of a certificate of occupancy, all properties subject to a preconstruction survey shall, subject to owner approval, be reinspected to determine any damages caused by vibration.
- (d) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with a vibration control plan submitted pursuant to this section, shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Where non-criminal disposition of specified sections of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said

violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).

- (e) *Enforcement:* The commissioner or his/her/their designee shall enforce all provisions of this section, including any regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (f) *Regulatory Authority:* The commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.
- (g) *Severability:* If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect.



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

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Barney Heath
Director

DATE: October 13, 2023

MEETING DATE: October 18, 2023

TO: Programs and Services Committee of the City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning

CC: Jonah Temple, Deputy City Solicitor
Josh Morse, Commissioner of Public Buildings
Anthony Ciccariello, Commissioner of Inspectional Services
Lou Taverna, City Engineer, Engineering Division of Public Works

Petition #88-22 Request for a study on construction vibration standards

COUNCILORS ALBRIGHT, BAKER, BOWMAN, DOWNS, GREENBERG, HUMPHREY, LAREDO, LEARY, MALAKIE, NORTON, RYAN based on the Washington Place Liaison Committee recommendations, requesting the study, analysis, review of vibration standards related to construction projects as they affect neighboring buildings. The outcome of this analysis could be an amendment to Chapter 20, Sec. 13-22 Noise, to include a vibration section in construction projects.

Petition #314-23 Discussion and Possible Creation of Ordinance Regarding Vibration Control Measures

HER HONOR THE MAYOR requesting the discussion and possible creation of an ordinance that would require control measures for construction activities that cause vibrations in both by-right and special permit projects.

The above docket items originated from vibratory impacts of construction to neighboring buildings. This topic has been long discussed at the Land Use Committee depending on the size and scale of a project and as a result, a standard condition around vibration control was drafted. Following approval, development teams encountered unanticipated issues with the condition as written and most recently in July 2023, three projects came back to have their vibration control condition altered so they could begin the steps to apply for a building permit.

Upon review, city staff discovered issues with the way the condition is written and its applicability to only special permit projects within the city and acknowledged some measures should be applied to as of right projects dependent on unique characteristics of the land. As such, new language was drafted, to be

reviewed and approved by the City Council and with the goal of adoption as an Ordinance. The intent of the Ordinance is to ensure vibration control protections would apply to both as of right projects and special permit projects within the City. Attached is the proposed language crafted by the Law Department **(Attachment A)**.

When reviewing the former special permit condition, Commissioner of Public Buildings Josh Morse strongly recommended against using a one size fits all approach regarding the distance for preconstruction surveys, vibration monitoring and control measures as each project and site conditions (including subsurface conditions) are unique; instead he recommended requiring a plan prepared and submitted by a licensed and insured geotechnical professional that would determine the appropriate scope of vibration monitoring and control measures in light of given the construction methods, site conditions and site location. When evaluating the potential impact of city construction projects, Commissioner Morse tailors the approach taken as to which properties to include in the pre-construction survey dependent on the scope of construction and characteristics of the site and neighborhood. Commissioner Morse also noted that regulating vibration solely through the use of a special permit condition does not capture by right projects which can also impact surrounding properties with their construction. The City Engineer and Commissioner of Inspectional Services agree with this approach for a revised condition.

Based on the feedback from these experienced City officials and our charge in developing a set of regulations which are reasonable in terms of protections offered and would apply to both Special Permits and by-right projects alike, City Staff recommend a city-wide ordinance that would require vibration control for all private projects utilizing certain construction methods. The proposed Ordinance would require a vibration control plan prepared by a licensed and insured geotechnical consultant, proof of notice to all properties within the scope that a preconstruction survey was offered, a list of all properties surveyed, and any other plans or specifications required by the Commissioner of Inspectional Services. If the geotechnical professional submits a signed and stamped letter indicating that vibration controls are not necessary based on the scope of work and construction methods proposed, then the submission of a vibration control plan will not be required. While this differs from the original vibration control condition, it allows a specialized approach dependent on site conditions and construction methods. The proposed Ordinance would also govern by right projects, not currently captured as the vibration control condition is only applied to special permit projects.

ATTACHMENTS

Attachment A: Draft Vibration Control Ordinance

DRAFT ORDINANCE SECTION 5-23

Sec. 5-23 Regulation of Vibration Monitoring and Protection

- (a) Prior to the issuance of a demolition or building permit for any demolition, site work, or construction activities that require the driving of piles or piers, the removal or alteration of ledge, or significant soil reinforcement or compaction by vibratory roller, applicants shall submit the following to the Commissioner of Inspectional Services:
 - (1) A vibration control plan signed and stamped by a licensed and insured geotechnical consultant that determines the scope of preconstruction surveys needed; the basis for that determination; and the recommended vibration level limits and monitoring services to be provided for the duration of the construction activity.
 - (2) Proof of notice to all properties within such scope that a preconstruction survey was offered at no cost to the property owner.
 - (3) A list of all properties that were surveyed.
 - (4) Any other plans or specifications as the Commissioner of Inspectional Services may require.
- (b) The submitted vibration control plan shall be implemented and adhered to during all relevant construction activity. The applicant shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
- (c) Following construction and prior to the issuance of a certificate of occupancy, all properties subject to a preconstruction survey shall, subject to owner approval, be reinspected to determine any damages caused by vibration.
- (d) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with a vibration control plan submitted pursuant to this section, shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Where non-criminal disposition of specified sections of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said

violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).

- (e) *Enforcement*: The commissioner or his or her designee shall enforce all provisions of this section, including any regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (f) *Regulatory Authority*: The commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.
- (g) *Severability*: If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect.

Nathan Giacalone

From: Alicia Bowman
Sent: Monday, December 27, 2021 2:26 PM
To: Alison M. Leary; Marc C. Laredo; Holly Ryan; Nathan Giacalone; Susan Albright; Andreae Downs; Joshua Krintzman; Pamela Wright; Deborah J. Crossley; Julia Malakie; Emily Norton; Maria Scibelli Greenberg; Christopher J. Markiewicz; Bill Humphrey
Cc: R. Lisle Baker
Subject: Re: Construction Vibration Standards Study Item NFAT

Yes please add my name.

Alicia Bowman (she/her/hers)
Newton City Council, Ward 6
abowman@newtonma.gov
617-257-8270

From: Alison M. Leary <aleary@newtonma.gov>
Sent: Friday, December 24, 2021 12:03:33 AM
To: Marc C. Laredo <mlaredo@newtonma.gov>; Holly Ryan <hryan@newtonma.gov>; Nathan Giacalone <ngiacalone@newtonma.gov>; Susan Albright <salbright@newtonma.gov>; Andreae Downs <adowns@newtonma.gov>; Joshua Krintzman <jkrintzman@newtonma.gov>; Pamela Wright <pwright@newtonma.gov>; Deborah J. Crossley <dcrossley@newtonma.gov>; Julia Malakie <jmalakie@newtonma.gov>; Emily Norton <enorton@newtonma.gov>; Maria Scibelli Greenberg <msgreenberg@newtonma.gov>; Alicia Bowman <abowman@newtonma.gov>; Christopher J. Markiewicz <cmarkiewicz@newtonma.gov>; Bill Humphrey <bhumphrey@newtonma.gov>
Cc: R. Lisle Baker <lbaker@newtonma.gov>
Subject: Re: Construction Vibration Standards Study Item NFAT

Please add my name. Important to re docket this item.

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From: Marc C. Laredo <mlaredo@newtonma.gov>
Sent: Wednesday, December 22, 2021 5:37:48 PM
To: Holly Ryan <hryan@newtonma.gov>; Nathan Giacalone <ngiacalone@newtonma.gov>; Susan Albright <salbright@newtonma.gov>; Alison M. Leary <aleary@newtonma.gov>; Andreae Downs <adowns@newtonma.gov>; Joshua Krintzman <jkrintzman@newtonma.gov>; Pamela Wright <pwright@newtonma.gov>; Deborah J. Crossley <dcrossley@newtonma.gov>; Julia Malakie <jmalakie@newtonma.gov>; Emily Norton <enorton@newtonma.gov>; Maria Scibelli Greenberg <msgreenberg@newtonma.gov>; Alicia Bowman <abowman@newtonma.gov>; Christopher J. Markiewicz <cmarkiewicz@newtonma.gov>; Bill Humphrey <bhumphrey@newtonma.gov>
Cc: R. Lisle Baker <lbaker@newtonma.gov>
Subject: Re: Construction Vibration Standards Study Item NFAT

Please add me

Marc C. Laredo
Councilor At-Large, Ward 7
617-290-3843 (cell)

From: Holly Ryan <hryan@newtonma.gov>

Sent: Wednesday, December 22, 2021 5:24:55 PM

To: Nathan Giacalone <ngiacalone@newtonma.gov>; Susan Albright <salbright@newtonma.gov>; Alison M. Leary <aleary@newtonma.gov>; Andreae Downs <adowns@newtonma.gov>; Marc C. Laredo <mlaredo@newtonma.gov>; Joshua Krintzman <jkrintzman@newtonma.gov>; Pamela Wright <pwright@newtonma.gov>; Deborah J. Crossley <dcrossley@newtonma.gov>; Julia Malakie <jmalakie@newtonma.gov>; Emily Norton <enorton@newtonma.gov>; Maria Scibelli Greenberg <msgreenberg@newtonma.gov>; Alicia Bowman <abowman@newtonma.gov>; Christopher J. Markiewicz <cmarkiewicz@newtonma.gov>; Bill Humphrey <bhumphrey@newtonma.gov>

Cc: R. Lisle Baker <lbaker@newtonma.gov>

Subject: Re: Construction Vibration Standards Study Item NFAT

Yes

Holly Ryan
City Councilor Ward 8
1000 Commonwealth Ave.
Newton, MA 02459
she/her/hers

From: Nathan Giacalone <ngiacalone@newtonma.gov>

Sent: Wednesday, December 22, 2021 5:09 PM

To: Susan Albright <salbright@newtonma.gov>; Alison M. Leary <aleary@newtonma.gov>; Andreae Downs <adowns@newtonma.gov>; Marc C. Laredo <mlaredo@newtonma.gov>; Joshua Krintzman <jkrintzman@newtonma.gov>; Pamela Wright <pwright@newtonma.gov>; Deborah J. Crossley <dcrossley@newtonma.gov>; Julia Malakie <jmalakie@newtonma.gov>; Emily Norton <enorton@newtonma.gov>; Maria Scibelli Greenberg <msgreenberg@newtonma.gov>; Alicia Bowman <abowman@newtonma.gov>; Christopher J. Markiewicz <cmarkiewicz@newtonma.gov>; Bill Humphrey <bhumphrey@newtonma.gov>; Holly Ryan <hryan@newtonma.gov>

Cc: R. Lisle Baker <lbaker@newtonma.gov>

Subject: Construction Vibration Standards Study Item NFAT

Good afternoon everyone,

The item below will be assigned NFAT (No Further Action Taken) at the conclusion of this term and Councilor Baker would like to re-docket it in the new year. Please reply to me whether you would like to remain as a co-docketer on the new item or not.

Best,
Nathan

#121-20 Request for a study on construction vibration standards

COUNCILORS ALBRIGHT, LEARY, DOWNS, LAREDO, KRINTZAN, WRIGHT, CROSSLEY, MALAKIE, BAKER, NORTON, GREENBERG, BOWMAN, MARKIEWICZ, HUMPHREY, AND RYAN based on the Washington Place Liaison Committee recommendations, requesting the study, analysis, review of vibration standards related to construction projects as they affect neighboring buildings. The outcome of this analysis could be an amendment to the Noise Ordinance to include a vibration section, regulations on vibrations and/or a vibration section to be included in construction management plans.

Nathan Giacalone
Committee Clerk

**Office of the City Council
617-796-1212**