



Programs & Services Committee Report

City of Newton In City Council

Wednesday, September 18, 2024

Present: Councilors Krintzman (Chair), Oliver, Malakie, Baker, and Farrell

Absent: Councilors Humphrey, Micley, and Lobovits

Also Present: Councilor Getz

City Staff: Anthony Ciccariello, Commissioner of Inspectional Services; Kristen Annunziato, Assistant City Solicitor; Nicole Banks, Commissioner of Parks, Recreation and Culture; George McMains, Acting Chief of Police; and Jaclyn Norton, Committee Clerk

All agendas and reports, both past and present can be found at the following link: [Programs & Services Committee | City of Newton, MA \(newtonma.gov\)](https://www.newtonma.gov/Programs%20and%20Services%20Committee)

For more information regarding this meeting, a video recording can be found at the following link: [Programs and Services Committee - September 18, 2024 \(youtube.com\)](https://www.youtube.com/watch?v=...)

#339-24 **Appointment of Mary Fitzgerald to the Parks and Recreation Commission**
HER HONOR THE MAYOR appointing Mary Fitzgerald, 315 Albemarle Road, Newton as an Alternate member of the Parks and Recreation Commission for a term of office set to expire on September 30, 2027. (60 Days: 11/03/2024)

Action: **Programs & Services Approved 4-0 (Councilor Farrell Not Voting)**

Note: Ms. Fitzgerald described that she is a lifetime resident of Newton and is a former seasonal employee of the Parks, Recreation and Culture Department. She sees serving on the Commission as a way to give back to the city and hopes to help marginalized individuals have greater access to PRC programming. A Councilor asked if the appointee would be in support of signage that notes the potential heat dangers of artificial turf. Ms. Fitzgerald supports this by making information available to people. Councilors voted 4-0 (Councilor Farrell Not Voting) on a motion to approve from Councilor Malakie.

#340-24 **Appointment of Mark Feldhusen to Parks and Recreation Commission**
HER HONOR THE MAYOR appointing Mark Feldhusen, 144 Cherry Street, Newton as the Ward 3 representative member of the Parks and Recreation Commission for a term of office set to expire on December 31, 2025. (60 Days: 11/03/2024)

Action: **Programs & Services Approved 4-0 (Councilor Farrell Not Voting)**

Note: Mr. Feldhusen has served as an alternate on the Parks and Recreation Commission previously and this appointment would make him the Ward 3 representative. He noted his involvement in the rewrite of the Commission's manual. He was also asked the question regarding artificial turf signage and noted the advisory role of the Commission and that these could be appropriate. Committee members voted 4-0 (Councilor Farrell Not Voting) on a motion to approve from Councilor Malakie.

#349-24 Appointment of Caitlin Cusick to the Parks and Recreation Commission

HER HONOR THE MAYOR appointing Caitlin Cusick, 50 Prentice Road, Newton as a Ward 7 member of the Parks and Recreation Commission for a term of office set to expire on October 21, 2027. (60 Days: 11/15/2024)

Action: Programs & Services Approved 3-0-1 (Councilor Malakie Abstained) (Councilor Farrell Not Voting)

Note: Ms. Cusick noted how recreation can be beneficial for building community and that she would bring the perspective of a frequent user of PRC facilities to the Commission. On the topic of signage, Ms. Cusick stated that she is not committed to adding this signage as she wants to have conversations with multiple parties on the matter. A Councilor encouraged her to look into serving as a member of the Newton Commonwealth Foundation as well due to her family's usage of the Commonwealth Golf Course. Councilors voted 3-0-1 (Councilor Malakie Abstained) (Councilor Farrell Not Voting) on a motion to approve from Councilor Baker.

#90-24 Requesting update on leaf-blower landscaper registration and enforcement ordinance

COUNCILORS BAKER, MALAKIE, LOBOVITS, WRIGHT, BLOCK, AND FARRELL requesting a discussion with the Commissioner of Inspectional Services and the Chief of Police, and responsible members of their Departments as to the progress in securing compliance with the leaf-blower provisions of Newton's noise ordinance requiring landscaper registration and lawful operation of noise-compliant equipment, including the reporting and enforcement work by those Departments.

Programs & Services Held 6-0 on 03/20/24

Action: Programs & Services Held 4-0 (Councilor Farrell Not Voting)

Note: The docketing Councilor stated that this discussion is to provide an update on the summer enforcement of the ordinance and to see if any amendments would be appropriate at this time. Anthony Ciccariello, Commissioner of Inspectional Services, stated that in 2024 at the time of the meeting, the Department had seen 183 complaints where landscapers have been found in compliance, 140 violations issued, and 104 warnings issued. These are on pace with 2023 where 261 complaints were filed where landscapers were found in compliance, 260 violations were issued, and 211 warnings were issued. George McMains, Acting Chief of Police, noted his prior involvement with former Chief McDonald on this ordinance and that it previously has not been administered by the Police Department due to uncertainty on who is issued the citation. He stated the current ordinance alleviates these concerns and the

Department will begin implementing the ordinance again. When asked if the ordinance should be uniform in restrictions year round both Commissioner Ciccariello and Acting Chief McMains agreed that a uniform ordinance would be easier for the public to understand.

Councilors asked if information could be received from members of the public for pattern recognition that could aid in enforcement. Commissioner Ciccariello responded that this information will be provided via phone or through complaints filed in the NewGov system and the part-time enforcement officer utilizes this information to determine routes to take. Kristen Annunziato, Assistant City Solicitor, added that this information can be used for enforcement but cannot be the sole basis for issuing a citation or ticket. In-person enforcement action is needed as well. On the topic of collecting fines, most tickets have been paid and some lawsuits have been filed for the worst offenders. The City has reached agreements with most of these companies. Tickets are occasionally appealed, and the City currently has a rate of 60% of appeals being upheld. Councilors asked if ISD and the Police Department can notify homeowners when they are using a suspended landscaper. Attorney Annunziato clarified that the utilization of a suspended landscaper is the same as the utilization of a non-registered landscaper. Councilors also showed support for waiting to explore a gas leaf blower ban to get more data on the current ordinance.

Councilors voted 4-0 (Councilor Farrell Not Voting) on a motion to hold from Councilor Baker.

#338-24 Request for review and strengthening of Sec. 20-13 Noise Control standards for repetitive impulsive sound

COUNCILORS MALAKIE, DOWNS, GETZ, AND LUCAS requesting review and amendment of noise ordinance to improve protection for abutters of construction projects from repetitive impulsive sound such as that produced by rock drills and pile drivers, including duration limits, hours of operation and allowed decibel levels.

Action: **Programs & Services Held 5-0**

Note: The docketing Councilor noted that the current decibel limit is 90 dBA as measured from the property line for rock drills and pile drivers. The reason for docketing this item came after multiple abutters complained about the sound made by these pieces of equipment and the duration of the sound. An example of the sound was played for the Committee. In 2023 the City Council adopted a vibration control ordinance that handles the impact of these devices on surrounding buildings.

Councilors asked if there was a way to put a limit on the times that this equipment could be used and if it could be part of the construction management plan. Requests were also made to look into other communities that have taken action to limit the noise from this equipment. Commissioner Ciccariello stated that careful consideration is needed on any potential restrictions as they could prolong the work and that the use of this equipment is an alternative to blasting. Attorney Annunziato added that there is concern about potential restrictions conflicting with the state building code.

Committee members voted 5-0 on a motion to hold from Councilor Baker.

#206-24 Requesting complete review and appropriate changes to the Rules of the City Council

COUNCILORS KRINTZMAN AND LAREDO requesting the review of the Rules of the City Council, traditionally done through a Subcommittee of the Programs & Services Committee. The Committee should review the rules and make recommendations to the full Committee in time for the recommendations to be reviewed and adopted by the full Council prior to the Inauguration of the next term's City Council, when the Rules for that Council are formally adopted at Inauguration.

Programs & Services Held 5-0 (Councilor Baker Not Voting) on 06/05/24

Action: **Programs & Services Held 5-0**

Note: The Chair described that the Rules Subcommittee will be holding its first meeting on Thursday, September 19th and that Councilor Micley will no longer be serving on the Rules Subcommittee. Councilor Humphrey will be serving in his place.

The meeting adjourned at 8:56 pm.

**Respectfully Submitted,
Josh Krintzman, Chair**

Background info re repetitive impulsive sound (Malakie notes for 9/18/24 P&S)

Existing construction noise ordinance related to construction:

(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.

* * * * *

(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.

* * * * *

(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:

- (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 (i).

* * * * *

(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.

15 Ruane Circle – site of 4 weeks of rock drilling in Nov/Dec 2021



Excerpts of emails

Saturday 11/13/21, 9:30am, 19 Exeter St resident to Linda Plazonja:

Mayor Fuller, congrats on your reelection. I am contacting you due to the excessive noise from pile driving activities on Ruane Circle. This has been going on for days and makes it very uncomfortable for neighbors as the pounding noise continues all day. There are other methods of building a house that are less disruptive to neighbors. House developers should not be allowed to disrupt their neighbors to this extent. Please look into this. Current situation is not acceptable for a quiet Newton residential neighborhood especially on a Saturday. Thank you, tstarr

Monday 11/15/21, 9:17am, 19 Exeter St resident to Mayor Fuller:

Good morning Mayor Fuller, hope you had a good weekend. The work/noise resumed again at 7:30am this morning. I was mistaken; it is not pile driving but rather hammering of ledge to break up the rock to allow for the developer to dig it out and build a big basement for a big new house I am sure. I suspect that the hammering is within the permitted limit for construction noise of 90 decibels although a few times they probably exceed it. ISD should confirm. When I spoke with the contractor Saturday afternoon about how long this activity would continue, he proudly and defiantly told me 3 more weeks Monday through Saturday all day long. This is really not a good situation for a residential neighborhood. Is the noise within the permitted level? Probably. Does that make it right and good for our community? Especially for three plus weeks, all day long including Saturdays. I am sure this is not an isolated issue as developers buy old smaller homes in Newton, knock them down and then disrupt the neighborhood in pursuit of the next \$4m new home. I am not opposed to development and appreciate the need to replace older housing stock with new homes but Newton should make sure that the process affords some respect to the neighbors. When this permit was issued, ISD should have understood that there would be 4 weeks of pounding ledge removal with all the noise and impact on the neighbors and perhaps the better decision would have been to tell the developer you can build a new home in Newton but not if there will be 4 weeks of such loud disruptive hammering of ledge. In this case, the only one who wins is the developer who of course isn't even at the site listening to the noise or even considering the impact on the neighbors. As a minimum, this type of work should NOT be permitted on Saturdays. We deserve at least a couple days of tranquility in our neighborhood and backyards. I would be happy to work with your

Monday 11/15/21, 4:18pm, Linda Plazonja reply to 19 Exeter St resident:

I brought the matter to the attention of the Commissioner of Inspectional Services, who sent out the Zoning Enforcement Inspector. The Zoning Enforcement Inspector spent some time at the site, and tested the decibel levels on several occasions. These were found to be below the threshold set in the ordinance and, therefore, there is no violation. The Inspector spoke with the contractor and made him aware that the City will be routinely checking the decibel levels over the duration of the work.

The Newton City Council is responsible for reviewing and/or revising City ordinances. You can reach your City Councilors at the contact info below.

<https://www.newtonma.gov/government/city-clerk/city-council/council-members/ward-3>

Wednesday 11/17/21, 19 Exeter resident reply to Linda Plazonja:

Linda, thank you for arranging for ISD to visit the site. And thank you for requesting that ISD make periodic visits to the site to insure compliance as this is apparently ongoing for 3 weeks! Of course just because the decibel level of this constant almost 10 hours per day hammering is below the permitted level does not make it good or right. Every elected official in Newton should try and spend 4 weeks listening to this noise from their home and then decide if it is okay for the kind of community we want in Newton. And while I know that the City Council in Newton is the body that revises/passes ordinances I hope the Mayor uses her leadership position to foster a thoughtful discussion about how this type of activity impacts her constituents. As a minimum, this level of noise should not be permitted on Saturdays and if a project requires more than a week of rock hammering then it should not be allowed. How much disruption is it reasonable to ask of neighbors. I am working on a project in another community where the ledge will be removed through blasting which produces very little noise and when properly done does not create risk for surrounding structures. I hope all of our elected officials give this matter some due consideration moving forward. thank you, tstarr

Wednesday 11/17/21, 29 Exeter St resident to Plazonja, Mayor & me:

Beyond, the problems of persistent noise pollution – and today, when the larger hammer was back at work, I measured the level at ~80 dB, again under the limit, but when both hammers are simultaneously at work, undoubtedly the 90 dB threshold is approached if not surpassed – I have some concern over the potential structural impact on our properties from weeks of hammering. In our basement, more than 100 feet from the worksite, I can feel the vibrations emanating from the worksite. Are there proactive measures we can take to mitigate against potential structural damage to neighboring properties, or need I wait for cracks to appear in our exterior and/or interior walls?

I'm not sure how the 90 dB noise threshold was settled by the council (OSHA guidelines?), but I echo Tony's suggestion to foster a thoughtful discussion among the council. A useful starting point might be to subject the council to 80+ dB of construction noise for an hour while at the same time trying to hold a conversation about whether and for how long this level of noise should be permitted in our community, as well as what further mitigation measures or alternatives should be mandated.

Thursday 11/18/21, 29 Exeter St resident to me:

Hi Julia. Replying just to you here. Your video is showing the smaller of the two hammers at work. You can see the larger machine digging in your video. The hammer for the larger machine is quite a bit bigger and louder than that on the smaller machine.

Monday, 11/29/21, 4:27pm, me to ISD, Plazonja, Mayor & Ruane neighbors:

Hello Messrs. Lojek and Ciccariello,

I went by the Ruane Road side of the construction site this morning and met a couple more neighbors.

The larger of the two hammers was going (not the smaller Bobcat one). Standing at the construction fence on Ruane Circle, I got dB readings in the 70s and spiking to 80 with just the one hammer going.

I asked a neighbor on the *opposite* side of Ruane Road told to take a decibel reading with my phone *inside* their house, and he told me they got over 60.

I talked to Peter Kwan (cc'd here) who directly abuts the construction site and has been enduring hours of the rock drill hammering daily. He has not called the city but has called Northern Lights and asked if they could hold off starting to 7:30am instead of 7am, which they seem to be doing, at least for now.

Mr. Kwan also noted that some construction debris, specifically a couple of windows, have been left on the side of Ruane Circle, outside the construction fence, for a *couple of months*. (They're visible in the

video below.) I can't imagine that this developer plans to reuse these windows in the new build, and even if that were the case, they should not be left outside the fence where the glass could be broken by vandalism or carelessness. Can you request the developer to either dispose of any construction debris, or keep it inside the fence?

Also, can you ask the developer if there is a known end date for the rock hammering? I first heard from Mr. Starr on Exeter Street on Saturday, 11/13. At that point, one of the construction workers had told him they'd be hammering for three weeks. If that was correct, this should be the last week. Can you confirm when it will end. I think all the neighbors would appreciate knowing when it will stop.

If there is no end in sight, at what point will the city consider this unacceptable noise pollution? It is astonishing that it is not already.

Here's today's video. <https://youtu.be/f2l8iGxKmAg>

Tuesday, 12/7/21, 19 Exeter St resident to me, ISD, Plazonja, Mayor & neighbors:

Good morning, the relentless pounding of ledge continues unabated at Ruane Circle. We are now well into our 4th week of loud hammering disrupting the neighbors' right to quiet enjoyment of their homes. This is not what living in a residential neighborhood of Newton is supposed to be. As I have suggested in the past, I urge all elected officials in Newton to visit this site for an hour, imagine if this was happening in your backyard, and then consider if we should not be more thoughtful about private home renovation projects by an out of state developer in Newton. Hopefully, the large hole in the ground will soon be completed and the rock hammering will stop. Thanks for listening, tstarr

9/18/24, 29 Exeter St resident to me (recollections):

Our experience was week upon week of dreadful pounding and the walls of our house, especially in the basement where we have a gym, shaking. We both work from home and it was very disruptive, starting at times before 7 am and continuing through the work day into the evening. People on the other end of my calls would ask what's going on. If the work had been completed with a week or ten days, I would have understood, but in this case, there was repetitive excavation, refilling of holes and then excavation again at least two or three times, causing the excavation process to continue over a very long period of time, I believe for well over a month.

If the work is going to require more than a week's time, I'd encourage, or ideally require, alternative excavation means to be used instead, such as a controlled explosion. I can only imagine had we been new parents at the time what an even worse nightmare it would have been.

Videos:

Rock drill sound (no narration) <https://youtu.be/olA99vcRuNY?feature=shared>

Narrated video 11/16/21: https://youtu.be/2UiCho_uhJ8?feature=shared

Narrated video 11/29/21: <https://youtu.be/f2l8iGxKmAg?feature=shared>