

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, NOVEMBER 4, 2015

7:45 PM  
ALDERMANIC CHAMBER

**ITEMS SCHEDULED FOR DISCUSSION:**

- #31-15      PROGRAMS & SERVICES COMMITTEE proposing an ordinance to limit the use of leafblowers. [01/26/15 @ 2:20PM]
- #31-15(2)    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 @ 12:14PM]
- #34-13      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]

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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](mailto:jfairley@newtonma.gov), or 617-796-1253. For Telecommunications Relay Service dial 711.*

**ITEMS NOT SCHEDULED FOR DISCUSSION:****REFERRED TO PROGRAMS & SERVICES AND PUBLIC SAFETY COMMITTEES**

- #312-15 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. [10/19/15 @ 1:30 PM]

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

- #288-15 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 PROG & SERV AND PUBLIC FACILITIES COMMITTEES**

- #201-15 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 PROG & SERV AND PUBLIC FACILITIES COMMITTEES**

- #141-15 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 @ 2:52 PM]

**REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES**

- #140-15 PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES requesting that the School Department and/or the Executive Department provide updates on the progress of the potential purchase of the Aquinas site as well as short and long term plans for uses and operations at the site. [05/20/15 @ 8:53 PM]

**REFERRED TO PUB FACIL, PROG & SERV, AND PS&T COMMITTEES**

- #46-15 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 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 @ 3:56PM]
- #377-14 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 @ 5:43PM]

**REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES**

- #216-14 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]

**REFERRED TO PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES**

- #119-14 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]

**REFERRED TO FINANCE AND PROGRAMS & SERVICES COMMITTEE**

- #402-13 ALD. FULLER, GENTILE, RICE and LINSKY requesting a Home Rule Petition to amend Article 9 of the Charter to clarify that Neighborhood Area Councils shall maintain and control their own financial accounts and records, independent of City finances; and to further clarify that such independent financial accounts and records shall remain subject to City audit. [10/28/13 @ 10:18 AM]
- #398-13 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]

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

- #257-12 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 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 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,

Amy Mah Sangiolo

## LAW DEPARTMENT MEMORANDUM

To: Amy Sangiolo, Chair, and Members of the Programs and Services Committee

From: Marie M. Lawlor, Assistant City Solicitor

Date: October 30, 2015

Re: Item #31-15 Leaf Blowers

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In accordance with the requests of the Programs and Services Committee at its last meeting, I am attaching the latest draft (dated 10/30/2015) of the leaf blower amendment to the noise ordinance. The revised draft contains the following requested changes:

1. Seasons of operation (§20-13 (h) *Transitional restriction on use of leaf blowers*): summer ban dates were revised to May 15 – September 15; a winter ban from December 15 – March 1 was added.
2. The following underscored language was added in the emergency use sections to clarify that in addition to blanket suspension of the leaf blower ordinance in cases of emergency or special circumstance, individuals may request case by case exemptions from the Mayor in accordance with the general noise ordinance exemption provisions of §20-13 (i):  

“During times of emergency caused by a storm or other special circumstances the Mayor or his designee may temporarily suspend application of this section for the purposes of cleaning up from such storm or other special circumstance. The Mayor or his designee 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 §20-13(i).”
3. The following language was added in the transitional restriction (§20-13 (h) (3)) to prohibit use of multiple leaf blowers per 10,000 square feet of property:  

“(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. Language was added (§20-13 (m)) to specify that in the event the person in violation of §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.

Please note that although the Committee requested language to prohibit leaves, debris and dirt being blown onto neighboring properties and city streets, such regulation is not within the scope or purpose of the noise ordinance. Two other sections of the Ordinances may be generally applicable, however: Chapter 11 *Recycling and Trash* regulates proper disposal of leaf and yard waste; and §20-51 *Depositing of Litter* prohibits depositing discarded materials, rubbish, or litter of any kind on streets and public places and other premises without consent of the owner, except in containers set out for collection in accordance with Chapter 11.

#31-15 (LEAF BLOWERS)

DRAFT REDLINE FOR DISCUSSION PURPOSES (10/30/2015)

(Transition period leading to total ban version)

(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 therefor 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 (10/30/2015)

§ 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

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

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 (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

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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.

The following language of section (h) shall be effective until June 1, 2018:

(h) Transitional restriction on use of leaf blowers. Notwithstanding the provisions of sections 20-13 (f) and (g), until June 1, 2018, 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

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

number of the leaf blower;

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. 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).

The following language of section (h) shall be effective after June 1, 2018:

(h) Use of leaf blowers prohibited.

(1) No person, including any City employee or contractor, shall use or operate a leaf blower within the City of Newton.

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

(hi) 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

## #31-15 DRAFT REDLINE FOR DISCUSSION PURPOSES (10/30/2015)

## § 20-14      NEWTON ORDINANCES — CIVIL FINES AND MISCELLANEOUS OFFENSES      § 20-19

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.

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

(~~jk~~) *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.

(~~kl~~) *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.

(~~ln~~) *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.**

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO. \_\_\_\_

\_\_\_\_, 2015

BE IT ORDAINED BY THE BOARD OF ALDERMEN  
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton Massachusetts, 2012, as amended, be and hereby  
are further amended as follows:

Add a new section 12-72 to **ARTICLE IX.** of Chapter 12 as follows:

**Section 12-72 Polystyrene Prohibition.**

(a) **Short Title.** This Section may be cited as the "Polystyrene Prohibition  
Ordinance" of the City of Newton.

(b) **Declaration of findings and policy—Scope.**

The Board of Aldermen hereby finds that the prohibition on the use of  
polystyrene food containers by food service establishments in the City of Newton  
(the "City") is a public purpose that protects the public health, welfare and  
environment, advances solid waste reduction and protects waterways.

(c) **Definitions.**

(1) The following words shall, unless the context clearly requires otherwise,  
have the following meanings:

(a) "Department" means the City's Department of Health and Human  
Services.

(b) "Commissioner" means the City's Commissioner of Health and  
Human Services.

(c) "Disposable Food Container" means single-use disposable  
products used in the restaurant, food service, and food sales industries for  
serving, transporting, or packaging prepared, ready-to-consume, or  
uncooked food or beverages. This includes but is not limited to plates,  
cups, bowls, trays, and hinged or lidded containers. This does not include  
single use disposable items such as straws, cup lids, or utensils.

(d) "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption, including but not limited to any establishment requiring a permit to operate in accordance with the State Food Code.

(e) "Expanded polystyrene" (EPS) means polystyrene that has been expanded or "blown" using a gaseous blowing agent into a solid foam.

(f) "Polystyrene" means expanded polystyrene which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to, fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene. The term "polystyrene" also includes clear or solid polystyrene, which is known as "oriented polystyrene."

(g). "Prepared food" means any food or beverage prepared for consumption on the food provider's premises, using any cooking or food preparation technique. This does not include any raw or uncooked meat, fish, or eggs unless provided for consumption without further food preparation.

(d) **Prohibition**

Food establishments are prohibited from dispensing prepared food or beverages to any person in disposable food containers made from polystyrene or expanded polystyrene.

(e) **Effective Date.**

This Section shall take effect one hundred and eighty (180) days from the date of enactment.

(f) **Exemption.**

(1) The Commissioner may exempt a food establishment from the requirements of this Section for a period of up to six (6) months, upon a finding by the Commissioner that the requirements of this Section would cause undue hardship to the food establishment. An "undue hardship" shall mean a situation unique to the food establishment where the food establishment requires additional time in order to draw down an existing inventory of polystyrene or expanded polystyrene food containers and compliance with this section would cause significant hardship. Any food establishment receiving an exemption shall file

with the Commissioner monthly reports on inventory reduction and remaining stocks.

(2) Any food establishment shall apply for an exemption to the Commissioner using forms provided by the Department, and shall allow the Commissioner or his or her designee, access to all information supporting its application.

(3) The Commissioner may approve the exemption request, in whole or in part, with or without conditions.

(4) The Commissioner, by regulation, may establish a fee for exemption requests.

(g) **Enforcement.**

(1) **Fine.** Any food establishment which violates any provision of this Section or any regulation established by the Commissioner shall be liable for a fine as follows: First offense, warning; second offense, \$100.00; third offense, \$200.00; fourth and subsequent offenses, \$300.00. Each day a violation occurs shall constitute a separate offense.

(2) Whoever violates any provision of this Section or any regulation established by the Commissioner may be penalized by a noncriminal disposition as provided in G.L. c. 40, §21D. For purposes of this section, the Commissioner of the Health and Human Services, or his or her designee, shall be enforcing persons.

(h) **Severability.**

Each separate provision of this Section shall be deemed independent of all other provisions herein, and if any provision of this Section be declared to be invalid by a court of competent jurisdiction, the remaining provisions of this Section shall remain valid and enforceable.

-And-

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

Amend paragraph (b), HEALTH AND HUMAN SERVICES DEPARTMENT, by adding after CITY ORDINANCES, Any offense, the following:

.....PENALTY

Section 12-72. Polystyrene Prohibition Ordinance

- ( ) First offense.....Warning
- ( ) Second offense.....\$100.00
- ( ) Third offense.....\$200.00

( ) Fourth or subsequent offenses.....\$300.00

Approved as to legal form and character:

(SGD) \_\_\_\_\_  
City Solicitor

Under suspension of Rules  
Readings Waived and Adopted  
\_\_\_ yeas and \_\_\_ nays

(SGD) \_\_\_\_\_  
City Clerk

(SGD) \_\_\_\_\_  
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The Opinion Pages | CONTRIBUTING OP-ED WRITER

# Good Riddance to the Foam Take-Out Carton

JAN. 28, 2015

**Mark Bittman**

Strike another blow against so-called convenience and bring back the paper coffee cup with the Greek columns: foam cups and other polystyrene foam packaging, even packing “peanuts,” are going bye-bye in New York City.

They’re already banned, or will be, in over 100 jurisdictions in the United States, including the District of Columbia; Seattle; Portland, Ore.; Minneapolis and San Francisco, and some 90 other municipalities in California. But the New York City move may signal the death knell for the stuff most of us call by its common (and technically misapplied) name, Styrofoam.

In a way, the end seems to have been long-delayed; remember, in one of its most progressive moves ever, McDonald’s stopped using the stuff for its chicken and hamburger containers nearly 25 years ago (though they kept foam cups till 2013).

This is a small but symbolic victory, part of an encouraging trend that indicates there are considerations beyond ease and profits.

But environmentally, it won’t make much of a difference. Nonprofits and

small businesses can become exempt — ludicrous exceptions, since even a spokesperson for the New York State Restaurant Association called the cost of replacement packaging “nominal” — and foam peanuts can still be used in packing originating elsewhere. The 28,000 tons of the stuff New York City collects annually will decline significantly, but it won’t disappear. And while that sounds like a lot, it’s less than 1 percent of what the city picks up curbside. Nor does the ban address rigid polystyrene like that used in CD cases, which accounts for another 30,000 tons of junk.

So if the ban were totally successful, it would reduce the amount of polystyrene in landfills by less than 50 percent, and the amount of overall curbside collection by less than half of a percent. Not exactly a revolution in waste reduction. (There are other reasons to ban polystyrene, which is a suspected carcinogen.)

But to see the ban in context generates hope. In addition to forcing both industry and consumers to seek alternatives, the ban’s importance lies in the ability of the city to get it enacted, an effort that began with the Bloomberg administration and was completed by Mayor Bill de Blasio’s.

Of course, “Big Plastic,” or whatever you want to call it — in this instance represented by the industry leader Dart Container Corporation and the trade group American Chemistry Council — fought hard against the measure, even successfully stalling it for a year in an attempt to demonstrate that the foam could be recycled. The city remained unconvinced, and the ban will take effect July 1, though it won’t be enforced until next year.

Combine the surge in these bans with the probably more important and increasingly popular bans of — or taxes on — one-time-use plastic shopping bags, and you start to see a pattern: municipalities and sometimes even states are asserting themselves against the “right” of industry to sell whatever it wants, and more of the public is willing to have government alter its behavior when the reasons are sound. (The just-passed soda tax in Berkeley fits into this

pattern.) That combination is leading to victories for the environmental and public health movements, and it's changing people's behavior.

Plastic shopping bags are a visible and intractable nuisance as well as a long-term danger to health — the slowly degrading plastic leaches toxins into the environment for centuries — and a well-publicized threat to wildlife; 95 percent of the seabirds examined in one North Sea study had plastic in their stomachs. In clogging storm drains, they've even been found to increase the danger of flooding. (You might read, or re-read, the 11-year-old Ian Frazier piece in *The New Yorker* about snagging bags out of trees, which comes to mind whenever I see a bag stranded and waving from a limb or some barbed wire, or simply floating through the air like a balloon.) The collection of plastic bags costs taxpayers a bundle, roughly \$25 million annually in California alone.

A statewide ban on plastic bags is on hold in that state, where, according to the environmental group Californians Against Waste, 400 of them are used per second. But they're still banned in over 130 jurisdictions, containing a third of California's population. They're also banned in dozens of other communities nationwide. (Not New York City, though; a shame.) Perhaps more impressive is the global activity against plastic bags: in 2002, Ireland instituted a 15-euro cent tax per bag (it's now 22 euro cents), which helped reduce usage by 95 percent while raising money for recycling and waste reduction initiatives. Seeing this success, several European countries followed suit; Italy banned non-biodegradable plastic bags entirely, joining Rwanda, China, South Africa and other countries that have gotten rid of ultra-thin bags and begun charging customers for thicker plastic versions.

The California measure was to go into effect this July, but the American Progressive Bag Alliance, whose chief called the ban "a terrible piece of job-killing legislation" (even though a significant portion of the bags are produced in other states), appears to have forced a referendum. This 16-month delay will allow manufacturers to sell around 9 billion extra bags, worth as much as \$145

million. That's down from its pre-ban peak but still a staggering number when you consider almost all of them are used only once.

But the trends are clear: noxious, petroleum-based containers that do not lend themselves to recycling and are easily replaced are on the way out, if not via national legislation or the Environmental Protection Agency then through local and state laws.

There is, however, another issue here, and that is changing culture. Plastic bags could, of course, be re-used, at least a little bit. Almost no one does that, because they're not especially sturdy, they're uncomfortable to carry and because we've been trained to think of them as disposable.

But in a world that is continually being reminded that resources and landfill are limited, curbing products that waste both makes sense, not only for its direct effect but for its cultural changes. I saw this myself in the course of the last month, during which I've been mostly in Berkeley.

Generally, I would call myself a modestly law-abiding recycler, or a half-hearted begrudging one, anyway. But in my first few trips to the supermarket in Berkeley I felt not exactly ashamed but out of step: nearly everyone was carrying their own bags into the store. And there I was, paying 10 cents for a paper bag.

That's a price I can afford to ignore, but within a week, I'd joined the crowd. The reasons, I think, range from wanting to be part of the community to recognizing that it just isn't that onerous to walk down the street with an empty canvas bag. (It's even easier if the bag is in your car.)

Within another week, I was bringing once-used fruit-and-vegetable plastic bags back to the market to use again; I mean, why not? Which almost leads me to suggest that we start carrying re-usable containers for take-out food, as some people have begun to do for coffee. Yes, it's less convenient. But convenience isn't everything.

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## Foam container ban approved by Pittsfield City Council

By Jim Therrien

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UPDATED: 10/14/2015 02:12:57 PM EDT[9 COMMENTS](#)

**PITTSFIELD** >> Foam containers for prepared foods will no longer be permitted in Pittsfield, and few people are more surprised than Rinaldo Del Gallo.

Del Gallo, a local attorney, proposed the ordinance to ban polystyrene foam containers for prepared foods and drinks back in December 2012.

But the plan appeared doomed following a vote earlier this month by the Ordinance and Rules Committee, which recommended against adopting the ban.

"I am very pleasantly surprised," Del Gallo said Tuesday night after the City Council voted 7-3 to approve the measure.

Enacting an ordinance requires that no more than three councilors vote in opposition. As it turned out, following a lengthy debate that included adding amendments to the proposal and rejecting others, all seven other councilors present Tuesday voted in favor.

The ban, which will take effect in July 2016, was further honed to specifically refer only to the polystyrene foam cups, "clamshell" take-out food containers and similar products, not to the clear or hard plastic polystyrene that is considered more recyclable and less likely to leach into foods or result in litter.

As during the Ordinance and Rules Committee meeting, council President Melissa Mazzeo, Vice President Christopher Connell and Ward 2 Councilor Kevin Morandi maintained their opposition in the final vote. Councilor at large Churchill Cotton was absent due to illness.

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Opponents argued that since a bill in the Legislature would ban the foam products, the city should wait for that pass to provide some guidance. But proponents said it appears unlikely the bill will progress anytime soon and argued that Pittsfield should join the eight other Massachusetts communities with bans "and take the lead" on the issue.

Brad Verter, of [MassGreen.org](http://MassGreen.org) (<http://MassGreen.org>), told councilors during the public comment period, "The short answer is nothing will happen unless more cities like Pittsfield lead the way."

"I'd like to live in a city that really cares about visitors and guests," said Jane Winn, of Berkshire Environmental Action Team, referring to the products as a potential carcinogen. The youth of the city, she said, also want to know that Pittsfield "is a more progressive community."

Ward 6 Councilor John Krol said that on such issues the initial work "has always been done locally," not at the state or federal level, adding, "I would like to see us in that [progressive] category."

In Berkshire County, Great Barrington and Williamstown already have passed foam container bans.

"I'm not convinced we should follow this as a city," Connell said.

Mazzeo said she wasn't necessarily opposed to a ban but believes the council should take more time to study the issues involved and refine the ordinance, particularly in light of the changes made Tuesday.

Ward 3 Councilor Jonathan Lourop said the ordinance had been revised to include only the targeted foam materials, adding, "This is a good start."

Council sentiment seemed to turn more in favor of a ban after Ward 1 Councilor Lisa Tully, a registered nurse, said, "I think there's a lot of things in our history that [were found to] cause cancer," a reference to PCBs or similar materials eventually banned after health problems became a concern.

"I work in a department where I see cancer every day," she said.

As he has at past meetings on the subject, Matthew Fisher of Dart Container Corp., which manufactures the products, reminded councilors that polystyrene foam is regulated by the federal government and has been approved for use for decades.

Morandi and Connell argued that the impact of higher-cost paper or other containers for small businesses might be too great. "It is a choice issue," Morandi said, in which business owners are being denied a choice of containers.

Connell said the Ordinance and Rules Committee heard from a container distributor that the cost can be significantly higher than for foam products, adding that a chain store employee said the profit margin on a drink in Great Barrington is "about half" what it is in communities without a ban.

But proponents said the difference would likely be "pennies" per container, and the city would not have to deal with foam litter or with disposal of what they consider an unrecyclable or biodegradable product.

Industry representatives have argued that the foam, which is polystyrene injected with air to form the light, crumbly material, can be recycled.

Connell offered an amendment to postpone the start date to Jan. 1, 2017, and later to lower the potential fines from the Board of Health for noncompliance by a business, but all of those proposals were voted down.

The ordinance provides for a warning for a first violation, followed by fines of \$25 and \$50 for subsequent violations.

Ward 3 Councilor Nicholas Caccamo proposed two amendments that passed. Both were in the "definitions" section of the ordinance, one clarifying that only polystyrene foam materials would be banned and another to remove a reference to the city Green Commission that was no longer required and also opposed by commission members.

In Pittsfield, refuse is incinerated, which Del Gallo said poses an additional problem of likely air pollution when the foam is burned.

He said, however, that the fact "this does not break down" in nature and can be ingested by wildlife or pollute streams or other sensitive areas was his first reason for proposing the ban in December 2012.

The council committee also had referred the ordinance to the Green Commission, which earlier this year unanimously approved the concept. Commission member Nancy Nylen said Tuesday the recommendation came after a careful review of the information and she urged passage by the council.

During last-minute discussion of sending the issue back to committee, Krol said, "If we are not ready now, when will we be ready?"

He and Tully said they have heard very little opposition voiced by city businesses but support voice by other constituents. Morandi said he has heard from business owners with concerns.

Councilor at large Barry Clairmont said he would oppose sending the measure for yet another committee review, noting that it was first proposed in 2012.

"I move the question," Councilor at large Kathleen Amuso said at 10:38 p.m., more than three and a half hours into the meeting, which included other well-discussed agenda items. The vote in favor quickly followed.

Contact Jim Therrien at 413-496-6247.

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