



Memorandum

To: Board of Aldermen
From: Karyn Dean
Re: Leaf Blower Ordinance Amendment Proposals
Date: December 4, 2015

Attached please find all the proposed amendments to the leaf blower ordinance which have been submitted by outside parties, thus far. These include those offered by speakers at the November 18th meeting, as well as new submissions for the December 9th meeting.

The amendments offered by Ald. Hess-Mahan and Ald. Baker are attached to the agenda.

Thank you.

#31-15 (LEAF BLOWERS)

DRAFT REDLINE FOR DISCUSSION PURPOSES (~~10/30/2015~~)12-09-15

(~~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.

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

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

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

Saturday: ~~9:30:00~~ a.m. – 5:30 p.m.

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

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

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

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

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C. Leaf blowers must bear an affixed manufacturer’s label documenting a noise rating of ~~65 dB(A)~~77dB(A) or less from March 1 through May 15, and from September 15 through December 15, and a noise rating of 65 dB(A) or less at all other times during the year. or less; and

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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.

E. Commercial landscapers shall pay an annual registration fee of \$100 to the City of Newton. A \$300 non-registration fee shall be assessed to those commercial landscapers who do not register with the City.

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(3) No more than one leaf blower may be used on any lot of ~~10,000~~7,500 square feet or smaller. One additional leaf blower may be used for each additional ~~10,000~~7,500 square feet or portion thereof comprising one lot.

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

(5) The Mayor may grant, on a case by case basis, a permit for exemption from all or a portion of this section in accordance with the provisions of section 20-13 (i). Large property owners (owners of one or more adjoining parcels of land in common ownership that together comprise a total of 2 acres or more) must file an operations plan with the mayor in connection with an application for an exemption as outlined in section 20-13(i).

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

(1) The mayor or his designee may grant a permit for any activity otherwise forbidden by the provisions of this ordinance upon a determination by the mayor or his designee that compliance in the conduct of such activity would cause undue hardship on the person or persons conducting such activity or on the community, taking into account: (i) the extent of noise pollution caused by not requiring such compliance; and (ii) whether reasonable efforts have been made to abate the noise. The mayor or his designee shall establish appropriate procedures for the processing of requests for such permits, including such hearings as the mayor or his designee deems appropriate. In granting any such permit, the mayor or his designee may impose such appropriate conditions as he deems necessary pursuant to this section. Copies of all such permits shall be filed with the clerk of the board of aldermen promptly after issuance. Promptly after issuance, copies of all such permits shall be filed with the clerk of the board of aldermen and to each ward alderman for the affected ward.

(2) The mayor or his designee may extend to a specified date the time for compliance with this ordinance in the case of any particular activity with respect to which a determination is made that such extension is necessary to provide a reasonable opportunity for such activity to be brought into compliance. No such extension shall

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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.

(k) *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.

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

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

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

Secs. 20-14—20-19. Reserved.

To: Karyn Dean
Fr: Ken Glusman
Re: Comments Relative to Proposed Draft (11-6-15 Version)

1. I continue to maintain that allowing leaf blowers to be used when they cause the citizens the most pain (like right now) and banning them when they are very little used is a backwards solution. If that is all we can get politically, I can understand that. We will fight again another day.
2. What is the effective date? The mayor should not have the power to extend this date. We don't want to have this whole fight again.
3. The city should be exempted from this provision, so that we do not find this proposal trapped in the finance committee and then have to wait for another several years to resolve the matter. If the board wants to consider a *separate* proposal to subject the city to these rules, and send *that* to the finance committee, that would be fine. I am waiting to see what Mr. Buchbinder proposes for the golf courses and colleges before commenting on their situation.
4. Section 20-13(d), add the following definition: "The term *person* includes an individual and also a corporation, limited liability company, limited liability partnership, or other entity permitted by law to engage in business, and any entity organized not for profit."
5. Section 20-13(g)(3). Do not strike "leaf blower" from covered garden equipment. Leaf blowers should be both rated by the manufacturer at 65 dB and actually not emit any more noise than permitted by the statute. My concern is that people might be able to adapt the machines to make them more efficient and noisy. Also, I am concerned that machines wear out over time and become noisier.
6. Add a clause to Section 20-13(h)(3). "In addition, no leaf blower may be operated within 100 feet of another leaf blower in operation." Without such a provision, a limitation on the number of leaf blowers in use on a large lot becomes meaningless. Under the proposal, there are five permitted leaf blowers per acre. On a ten acre parcel, that's 50.
7. Add another clause to Section 20-13(h)(3): "Leaf blower operations are not permitted to cause leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris to be blown or deposited on any parcel of land, lot, or public right-of-way/property other than the parcel, land, or lot upon which the leaf blower is being operated."
8. Strike Section 20-13(h)(5). It is superfluous, since (i)(1) already covers the subject.
9. Strike Section 20-13(m) and add the following lieu thereof:
 1. Each operation of a leaf blower in a manner prohibited by Section 20-13(g) or (h), on a separate parcel of property on any given calendar day shall be treated as a separate violation of this Section. [This will also replace the sentence in (k) that permits a contractor to violate the law all day for a single fine. It would probably make good business sense to pay the fine under those circumstances.]
 2. A violation of Section 20-13(g) or (h) by any person in the course of his or her employment by another person shall be treated as committed also by such other person.

3. A violation of Section 20-13(g) or (h) by an independent contractor shall be treated as committed also by the person for whom the independent contractor is performing the services that gave rise to the violation.
4. It shall be no defense that some other person who might have been charged with a violation of Section 20-13(g) or (h) was not so charged.
5. It shall be no defense that a person did not receive a Required Notice.
10. Add a new Section 20-13(n) as follows, and renumber the remaining subsections accordingly:
“The City shall promulgate a brief notice setting forth the provisions of Sections 1 and 2 in plain language (the “Required Notice”) and shall make the same available on its web site and at the offices of the City. Any person performing landscaping or lawn maintenance services to another person (the “Client”) as an independent contractor shall deliver a copy of such Required Notice to such Client prior to commencing work for such Client, but this requirement shall apply only once per calendar year with respect to any given Client.¹”
11. Add a new Section 20-13(o) as follows, and renumber the remaining subsections accordingly.
“Any operation of a leaf blower not specifically permitted by Section 20-13(g) or (h) is hereby declared to be a nuisance and may be enjoined by any court of competent jurisdiction.
12. Add a new Section 20-13(p) as follows, and renumber the remaining subsections accordingly.
“Nothing herein shall be construed to limit the application of the law of nuisance, or of any other statute, regulation, rule, or the Common Law, to the operation of leaf blowers.”
13. Add a new Section 20-13(q) as follows, and renumber the remaining subsections accordingly.
“Any person who carries on the lawn care or landscaping business and violates the provisions of Section 20-13(g) or (h) three times or more within a twelve-month period shall be prohibited from carrying on such business in the city for a period of twelve months.”

¹ This places the homeowner on notice of the law and protects the landscaper from criticism by the homeowner for not using a more powerful device.

Karyn Dean

From: janesender <janesender@verizon.net>
Sent: Wednesday, November 18, 2015 1:40 PM
To: Karyn Dean
Subject: Proposed amendments to the Noise Control Ordinance

Dear Karen,

Here are our proposed amendments to Sec. 20-13 Noise Control. I will explain our thinking at the meeting tonight in my remarks before the committee.

Section 20-13 (g)(3)

Section should read:

Commercial truck-mounted leaf vacuum..... 65

(h) the first sentence should read:

Notwithstanding the provisions of section 20-13(f)and (g), no person, including any City employee or contractor, shall use or operate a leaf blower within the City of Newton from May 1 through October 15, or from January 1 through March 15 in each year .

(h)(1) should read

Permitted hours of use. Leaf blowers may be operated only during the following times;

Monday-Friday: 8:00a.m. -5:30 pm

Saturday 9:30a.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 12 noon and 5:30p.m.

(h)(2)(c)

Leaf blowers must bear an affixed manufacture's label documenting a noise rating of 65dB(A) or less. No decibel level reading by Newton Police or Inspectional Services is necessary to enforce this section.

(i)(3) new section

Notwithstanding the provisions of this section, all leaf blowers used pursuant to this exemption must comply with the provisions of (h) (1), (2) and (3).

Thank you very much!

Jane Sender



CHARLES RIVER COUNTRY CLUB

*483 Dedham Street
Newton Centre, MA 02459*

*617-332-1320
fax: 617-964-9679*

**Charles River Country Club
483 Dedham Street
Newton Centre, Ma 02459**

Suggestions for amendments to Noise Control Ordinance of the City of Newton: re: 11/06/2015 Update
Presented to the Programs & Services Committee
November 18, 2015

Article II
NOISE

Section 20-13 Page 4

(3) Yard, Garden or Grounds Maintenance Equipment – Maximum noise level dB (A) permitted **Page 4**

Change the following:

Leaf Blower.....77

Section 2013, Page 5

(7)

Remove (H) Restrictions on use of leaf blowers within the City of Newton from May 15 through September 15 or from December 15 through March 1

(7)(h)(1) Permitted hours of use: Change to the following:

Monday – Friday: 7:00 am – 4:00pm

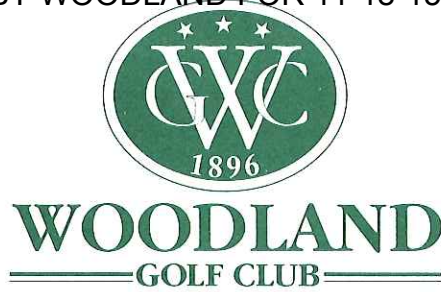
Saturday: 8:00 am – 4:00pm

Sundays and legal holidays: 8:00 am – 4:00 pm

(7)(h)(2)(C) - **Page 6**

Change to noise rating of 77 dB(A) for leaf blowers

(7)(h)(3)**Change 10,000 square feet to 7500 square feet**



Woodland Golf Club

Suggestions for amendments to Noise Control Ordinance of the City of Newton:

re: 11/06/2015 Update

Presented to the Programs & Services Committee, November 18, 2015

**ARTICLE II.
NOISE**

Section 20-13, Page 4

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

Note the following change:

Leaf Blower.....77

Section 20-13, Page 5,

(7)

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

Note the following change:

Remove (h) Restrictions on use of leaf blowers within the City of Newton from May 15 through September 15 or from December 15 through March 1

Section 20-13, Page 5

(7)

(h)

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

Note the following changes:

Monday – Friday: 7:00 am – 4:00 pm

Saturday: 8:00 am – 4:00 pm

Sundays and legal holidays: 8:00 am – 4:00 pm

Section 20-13, Page 6

(7)

(h)

(2)

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

Note the following change: **noise rating of 65 dB(A) to 77 dB(A) for leaf blowers**

Section 20-13, Page 6

(7)

(h)

(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 7,500 square feet or portion thereof comprising one lot.

Note the following change: **10,000 square feet to 7500 square feet**