

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, JANUARY 5, 2011

7:45pm Room 209, 222

**Chairman's Note: the Programs and Services Committee will first meet jointly with the Public Facilities Committee in room 209 to discuss the first item on the agenda before moving to room 222 to discuss the rest of the items. Please see the PF agenda for backup information relating to this item.**

**ITEMS SCHEDULED FOR DISCUSSION:**

**REFERRED TO PROG. AND SERVICES AND PUB. FACILITIES  
COMMITTEES**

#372-10 SUPERINTENDENT FLEISCHMAN requesting the vote of the Board of Aldermen to complement the vote of the School Committee to authorize the superintendent of schools to refresh the current statements of interest for 2011 to the Massachusetts School Building Authority by January 26, 2011 for the following schools: Angier, Bigelow, Burr, Cabot, Brown, Countryside, FA Day, Franklin, Horace Mann, Ward, Lincoln-Elliot, Mason-Rice, Pierce, Underwood, and Zervas. [12/09/10 @ 4:26PM]

Re-appointment by His Honor the Mayor:

#91-10(4) HIS HONOR THE MAYOR requesting an extension of Linda Walsh as the Interim Commissioner of Health and Human Services effective January 1, 2011 pursuant to Section 3-6 of the City Charter. [12/23/2010 @ 4:49PM]

#370-10 EXECUTIVE SECRETARY OF ELECTION COMMISSION requesting Board of Aldermen approval for the Municipal Election Calendar for 2011 which includes preliminary and general election dates and times, nomination paper filing and petition filing deadlines, dates, and times. [12/13/10 @ 12:29pm]

#362-10 HIS HONOR THE MAYOR requesting authorization to transfer the sum of one hundred forty thousand dollars from the FY 11 Budget Reserve for

The location of this meeting is handicap accessible, and reasonable accommodations will be provided to persons requiring assistance. If you have a special accommodation need, please contact the Newton ADA Coordinator Kathleen Cahill, 617-796-1125, via email at [KCahill@newtonma.gov](mailto:KCahill@newtonma.gov) or via TDD/TTY at (617) 796-1089 at least two days in advance of the meeting date.

the purpose of supplementing the unemployment account in the Human Resources Department. [11/29/10 @ 3:23 PM]

- #371-10 HIS HONOR THE MAYOR requesting that the Board of Aldermen accept the Massachusetts General Laws, Chapter 40, section 8J, and establish by ordinance a Commission on Disabilities in the City of Newton. [12/13/2010 @ 5:13PM]

**REFERRED TO PROG. AND SERVICES AND FINANCE COMMITTEES**

- #373-10 ALD. GENTILE, HARNEY, SANGIOLO requesting amendment to §20-13, *Noise Control*, of the City of Newton Revised Ordinances to prohibit outdoor athletic events from starting before 7 AM and increase the maximum fine to \$300. [12-10-10 @ 12:53 PM]
- #329-05(3) ALD. YATES requesting a discussion relative to amending the noise control ordinance to (A) prohibit the cumulative noise level from multiple pieces of equipment operating simultaneously on the same site to exceed the maximum noise levels allowed when measured at the nearest lot line and (B) to eliminate various exemptions in residential districts.

**ITEMS NOT YET SCHEDULED FOR DISCUSSION:**

- #357-10(2) ALD. YATES proposing a change in the proposed rule to eliminate the Committee on Community Preservation: community preservation items relating to housing and recreation shall be referred to the Programs and Services Committee; items relating to historic preservation and open space shall be referred to the Zoning and Planning Committee; all items shall then be referred to the Finance Committee. [12/6/2010 @ 10:57PM]

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

- #422-06(2) ALD. HESS-MAHAN requesting that a task force be established to meet and prepare a report and recommendations regarding the regulation of noise, air pollution and best practices with respect to the operation of power equipment used in landscaping, property and yard maintenance, including, without limitation, leaf blowers. [01/27/09 @ 3:47 PM]
- #207-08 ALD. BRANDEL AND SANGIOLO proposing that the following question be put before the Newton voters:  
“Shall the City of Newton be allowed to exempt from the provisions of Proposition 2 ½ the amounts required to pay for the bond issuance in order to fund Newton North High School?” [05/21/08 @ 12:58 PM]  
**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**
- #355-10 PRESIDENT LENNON and ALD. LAPPIN requesting a change to the rules of the Board of Aldermen to eliminate the Real Property & Reuse Committee. Issues regarding reuse of public buildings to be referred to the

Public Facilities Committee and issues regarding reuse of City owned land would be referred to the Land Use Committee. Effective date of this change will be January 1, 2012. [11/26/2010 @ 11:59 AM]

#356-10 PRESIDENT LENNON and ALD. LAPPIN requesting a change to the rules of the Board of Aldermen to eliminate the Post-Audit Committee. All post audit/follow-up items will be discussed in the substantive committee that originally heard the item. Effective date of this change will be January 1, 2012.[11/26/2010 @ 11:59 AM]

#357-10 PRESIDENT LENNON and ALD. LAPPIN requesting a change to the rules of the Board of Aldermen to eliminate the Committee on Community Preservation. All Community Preservation items will be referred to the Finance Committee. Effective date of this change will be January 1, 2012. [11/26/2010 @ 11:59 AM]

#95-09(2) PROGRAMS & SERVICE COMMITTEE requesting establishment of an Advisory Committee to review processes of the Board of Aldermen and report recommended efficiency improvements to the Board of Aldermen. Members of the Advisory Committee shall be appointed by the Chairman and Vice Chairman of the Programs & Services Committee and the President of the Board. [11/16/09 @ 3:59 PM]

#83-07(2) ALD. YATES proposing a RESOLUTION to the City's representatives and senator in the General Court asking them to co-sponsor the legislation of the Massachusetts Municipal Association that would give cities and towns the same power to determine their health care costs that agencies of the State have.[9/13/2010 @ 9:38am]

#98-10 ALD. YATES requesting that the Board of Aldermen and His Honor the Mayor take all possible steps to change state law to save local costs by giving cities and towns the right to negotiate health plans on the same basis as the Commonwealth. Such steps would include, but not be limited to, joining the Coalition to Save our Communities and notifying our city legislators of our urgent concern about this matter. [03/23/10 @ 4:29 PM]

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

#360-09(2) PROGRAM & SERVICES COMMITTEE requesting a discussion to explore possible sources of revenue to fund an off leash dog park system in the City. [11/06/09 @ 10:44 AM]

**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

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

#360-09(3) PROGRAMS AND SERVICES COMMITTEE requesting the creation of a revolving account for the purpose of managing the fees collected from the granting of off-leash dog licenses. [10/07/2010 @ 2:30pm]

- #306-08 ALD. BAKER, DANBERG, MANSFIELD & PARKER requesting discussion of how swimming at Crystal Lake might be lawfully and safely extended beyond mid-August. [08/26/08 @ 5:03 PM]

**REFERRED TO FINANCE AND APPROPRIATE COMMITTEES**

- #311-10 HIS HONOR THE MAYOR submitting the FY'12-FY'16 Capital Improvement Program, totaling \$174,246,135 pursuant to section 5-3 of the Newton City Charter and the FY'11 Supplemental Capital budget which require Board of Aldermen approval to finance new capital projects over the next several years. [10/18/10 @5:24PM]

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

- #307-10 PROGRAMS AND SERVICES COMMITTEE proposing a RESOLUTION to the Interim Director of Health and Human Services to increase the tobacco seller's license fee. [10/25/210 @ 4:34pm]

**REFERRED TO PUBLIC FACILITES, PROG&SERV 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]

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

- 206-10 VETERANS' AGENT requesting a discussion and support for the replacement of the WWII Honor Roll on the grounds of City Hall at the intersection of Walnut Street and Commonwealth Avenue. [07/06/10 @ 4:41 PM]

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

- #8-09 ALD. HESS-MAHAN, LINSKY, ALBRIGHT, FREEDMAN, MANSFIELD, JOHNSON, HARNEY & VANCE proposing an ordinance requiring that the installation of synthetic in-filled turf athletic fields on city-owned property shall use sustainable, recyclable, lead-free, non-toxic products to the maximum extent feasible. [12/30/08 @ 9:55 AM]

**REFERRED TO LAND USE AND PROGRAMS & SERVICES COMMITTEES**

- #474-08(2) ALD. HESS-MAHAN & VANCE proposing that Article X of the Rules & Orders of the Board of Aldermen be amended to conform with a proposed amendment to Chapter 30 re transfer of the special permit granting authority to the Zoning Board of Appeals and/or the Planning & Development Board for projects that are not classified as Major Projects pursuant to Article X. (*referred to rules subcommittee*)

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

- #258-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding reorganization of senior transportation services and establishment of intra-village transportation systems.  
[07/08/08 @ 1:29 PM]  
**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**
- #129-08 ALD. JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen stating that any new item submitted but not yet approved or accepted by the Full Board of Aldermen is prohibited from any formal or informal discussion by any formal, informal or special committee of the Board.  
[03-24-08 @ 9:11 AM]
- #287-07(2) ALD. PARKER requesting a discussion with Parks and Recreation Department in regards to an appropriate marker or plaque to honor and recognize Olympic figure skater and Newton resident Tenley Albright and her skating exhibition at the Crystal Lake upon her return from the 1956 Olympic Games where she won a gold medal. [09/20/07 @ 1:22 PM]
- #82-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to allow the cities and towns to tax all telecommunications facilities in the City (which would yield at least \$1.6 million per year for Newton). [02/27/07 @ 10:21 PM]
- #52-07 ALD. PARKER, SANGIOLO, MANSFIELD, HARNEY, DANBERG, VANCE, LINSKY, HESS-MAHAN, BURG, ALBRIGHT & JOHNSON requesting an ordinance amendment to create a health care advisory committee whose function would be to recommend measures to control the rate of increase of health insurance costs, as recommended by the Newton Finance & Management Working Group in 2005 and the Blue Ribbon Commission on the Municipal Budget in 2007.  
[02/09/07 @ 12:36 PM]
- #370-06 ALD. SANGIOLO, PARKER, MANSFIELD requesting home rule legislation to allow advisory questions to be asked in a Newton special election.

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

- #245-06 ALD. JOHNSON AND HESS-MAHAN requesting an amendment to the City Charter to require the Mayor annually to prepare and submit to the Board of Aldermen a long-term financial forecast of anticipated revenue, expenditures and the general financial condition of the City, including, but not limited to identification of any factors which will affect the financial condition of the City; projected revenue and expenditure trends; potential sources of new or expanded revenues; anticipated municipal needs likely to require major expenditures; and a strategic plan for meeting anticipated

municipal needs, to include, but not be limited to, any long or short-term actions that may be taken to enhance the financial condition of the City.

**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

#298-09 ALD. MANSFIELD proposing Home Rule Legislation to amend **Article 2, Section 2-1(c) Composition; Eligibility; Election and Term** of the Newton Charter to establish four-year terms for Aldermen-at-Large with the provision for one Aldermen-at-Large to be elected from each ward at each biennial municipal election. [09-29-09 @ 6:45 PM]

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

#273-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that the Executive and Human Resources Departments develop a comprehensive human capital strategy for the city to include: performance management, talent development, succession planning, and compensation. [07/17/08 @ 9:53 AM]

**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

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

#270-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor requesting that he work with the Board of Aldermen, School Department, and School Committee in order to determine the most effective and efficient way to organize the Information Technology Departments. [07/17/08 @ 9:53 AM]

**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

**REFERRED TO PROG. & SERV., PUB.FAC. AND FINANCE COMMITTEES**

#89-08 ALD. PARKER requesting the following:

- A) review of the maintenance practices for buildings, parks and other properties owned by the City (including School Department facilities and grounds)
- B) development of a comprehensive maintenance plan that includes regular schedules for preventive maintenance for each specific site or facility
- C) a RESOLUTION requesting that implementation of said maintenance plan be funded using operating budget funds.

[02/13/08 @ 12:07 PM]

**FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**

**PUBLIC FACILITIES NO ACTION NECESSARY ON 11/3/10**

Respectfully Submitted,

Amy Sangiolo, Chairman

**MUNICIPAL ELECTION CALENDAR  
2011**

10 DEC 13 PM 12:29  
 CITY CLERK  
 NEWTON, MA 02459

- 
- |                                    |  |
|------------------------------------|--|
| Friday, July 22, 5:00 p.m.         | Last day and hour to obtain Nomination Papers.   |
| Tuesday, July 26, 5:00 p.m.        | Last day and hour for submitting Nomination Papers to the Election Commission for certification of signatures.   |
| Tuesday, August 9, 5:00 p.m.       | Last day and hour for filing or withdrawing Nomination Papers with the Election Commission.  |
| Wednesday, August 24, 8:00 p.m.    | Last day and hour to register Voters for the Preliminary Election.   |
| <b>Tuesday, September 13, 2011</b> | <b>PRELIMINARY ELECTION</b>  |
| Tuesday, September 20, 5:00 p.m.   | Last day and hour to decline Preliminary Nomination.   |
| Tuesday, September 27, 5:00 p.m.   | Last day and hour for submitting petitions and non-binding public opinion advisory questions to the Election Commission for certification of signatures. |
| Tuesday, October 4, 5:00 p.m.      | Last day and hour for filing petition and non-binding public opinion advisory questions to appear on the ballot with the Election Commission.            |
| Wednesday, October 19, 8:00 p.m.   | Last day and hour to register Voters for the Municipal Election.   |
| <b>Tuesday, November 8, 2011</b>   | <b>MUNICIPAL ELECTION DAY</b>  |



SETTI D. WARREN  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

#362-10

Telephone  
(617) 796-1100

Facsimile  
(617) 796-1113

TDD/TTY  
(617) 796-1089

E-mail  
swarren@newtonma.gov

November 29, 2010

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

10 NOV 29 P 3:23  
CITY CLERK  
NEWTON, MA. 02159

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to transfer the sum of \$140,000 from the FY2011 Budget Reserve to the Human Resources Unemployment Account.

The City is currently spending approximately \$20,000 per month. The FY2011 budgeted amount was \$110,000, \$83,000 of which has already been expended. As you know, Congress has extended unemployment benefits as a result of the current economic conditions throughout the nation, which has a direct impact on this expenditure.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren  
Mayor

From: Budget Reserve  
0110498-5790 \$140,000  
To: HR Fringe Benefits  
0110901-5702 \$140,000

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.newtonma.gov



DEDICATED TO COMMUNITY EXCELLENCE



City of Newton



Setti D. Warren  
Mayor

**DEPARTMENT OF HUMAN RESOURCES**

1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449

Telephone (617) 796-1260

Fax (617) 796-1272

TTY (617) 796-1089

Dolores M. Hamilton, Director

November 24, 2010

Mayor Setti D. Warren  
Honorable Board of Aldermen  
City of Newton  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Dear Mayor Warren and Honorable Board of Aldermen:

The Human Resources Unemployment Account has recently seen a large increase in expenditures due to the state and federal extensions of unemployment benefits and the City employees whose positions were eliminated in FY 10. I am writing to you at this time to request an additional appropriation in the amount of \$140,000.00 for unemployment expenses anticipated through the remainder of FY 2011.

***Human Resources Unemployment Benefits Account #0110901-5702***

***\$140,000.00***

I respectfully request and recommend a favorable consideration to this request in order to meet the legal obligation of the City of Newton through June 30, 2011.

Sincerely,

Dolores Hamilton  
Director of Human Resources



SETTI D. WARREN  
MAYOR

# City of Newton, Massachusetts Office of the Mayor

# 371-10

371-10  
Telephone  
(617) 796-1100  
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(617) 796-1113  
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(617) 796-1089  
E-mail  
swarren@newtonma.gov

December 13, 2010

Honorable Board of Aldermen  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

NOV 13 10 5:13  
CITY CLERK  
NEWTON, MA 02459

Ladies and Gentlemen:

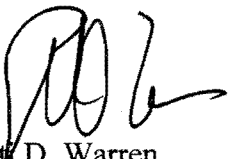
In order to better serve the needs of persons with disabilities in the City of Newton by formalizing the role and procedures of the Mayor's Committee on Disabilities thereby underscoring its importance to the City as well as ensuring its longevity, I request that the Honorable Board accept the provisions of Massachusetts General Laws, Chapter 40, section 8J and establish by ordinance a Commission on Disabilities in the City of Newton.

I have enclosed with this letter the following documents:

1. A copy of said Section 8J of chapter 40 of the Massachusetts General Laws;
2. A copy of the proposed draft ordinance establishing the Commission on Disabilities in accordance with the provisions of said Section 8J.

Currently, the Mayor is advised on issues concerning people with disabilities by his volunteer Committee on Disabilities. Acceptance of Section 8J, however, and formal establishment of a Commission on Disabilities in Newton will clarify its role in the City, and will clearly delineate its purpose and procedures in accordance with the statute. I believe that establishment by ordinance of a formal Commission on Disabilities will better enable the City to more fully ensure the integration and participation of all people with disabilities in our City.

Thank you for your consideration to this request.

Very truly yours,  
  
Setti D. Warren  
Mayor

Encl.

1000 Commonwealth Avenue Newton, Massachusetts 02459

[www.ci.newton.ma.us](http://www.ci.newton.ma.us)



DEDICATED TO COMMUNITY EXCELLENCE

- CHAPTER 40 POWERS AND DUTIES OF CITIES AND TOWNS
- Section 8J Disability commission; powers and duties; members; terms

10 DEC 13 PM 1:32  
 NEWTON  
 CIVIL SERVICE  
 DEPARTMENT

Section 8J. A city which accepts the provisions of this section by vote of its city council, subject to the provisions of its charter, or a town which accepts the provisions of this section at an annual or special town meeting, may establish a commission on disability, hereinafter called the commission, to cause the full integration and participation of people with disabilities in such city or town. Such commission shall (1) research local problems of people with disabilities; (2) advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities; (3) coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts office on disability; (4) review and make recommendations about policies, procedures, services, activities and facilities of departments, boards and agencies of said city or town as they affect people with disabilities; (5) provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability; (6) coordinate activities of other local groups organized for similar purposes.

Said commission shall keep records of its meetings and actions and shall file an annual report which shall be printed in the city or town annual report and shall have at least ten meetings annually.

Said commission shall consist of not less than five nor more than nine members. In cities, the members shall be appointed by the mayor, subject to the provisions of the city charter except that in cities having a Plan D or Plan E form of government said appointments shall be by the city manager, subject to the provisions of the charter, and in towns they shall be appointed by the selectmen, except towns having a town manager form of government, in which towns appointments shall be made by the town manager, subject to the approval of the selectmen and except towns having a town council form of government, the town manager. A majority of said commission members shall consist of people with disabilities, one member shall be a member of the immediate family of a person with a disability and one member of said commission shall be either an elected or appointed official of that city or town. The terms of the first members of said commission shall be for one, two or three years, and so arranged that the term of one-third of the members expires each year, and their successor shall be appointed for terms of three years each. Any member of said commission may, after a public hearing, if so requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. The chairperson and other officers shall be chosen by a majority vote of said commission members.

Said commission may receive gifts of property, both real and personal, in the name of the city or town, subject to the approval of the city council in a city or the board of selectmen in a town, such gifts to be managed and controlled by said commission for the purposes of this section.

10 DEC 13 P 5:13  
CITY CLERK  
NEWTON, MA 02159**DRAFT FOR DISCUSSION 12/2/2010**

Insert after Article V, in Chapter 22, PLANNING AND DEVELOPMENT, a new  
**Article VI. Commission on Disabilities** as follows:

**ARTICLE VII. COMMISSION ON DISABILITIES****Sec. 22-100 Created, membership, terms, removal, chairperson, officers.**

There is hereby established within the city a commission on disabilities, consisting of not less than five (5) not more than nine (9) members to be appointed by the mayor with the approval of the board of aldermen. Such members shall be residents of the city and shall serve without compensation. A majority of said commission members shall consist of people with disabilities, one member shall be a member of the immediate family of a person with a disability and one member of said commission shall be either an elected or appointed official of the city. The terms of the first members of said commission shall be for one, two or three years, and so arranged that the term of one-third of the members expires each year, and their successor shall be appointed for terms of three years each. Any member of said commission may, after a public hearing, if so requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. The chairperson and other officers shall be chosen by a majority vote of said commission members.

**Sec. 22-101 Purposes.**

It shall be the purpose of this commission to cause the full integration and participation of people with disabilities in the city consonant with the enabling legislation contained in chapter 40, section 8J of the Massachusetts General Laws. In accordance with this legislation, the commission shall:

- (a) research local problems of people with disabilities;
- (b) advise and assist municipal officials and employees in ensuring compliance with state and federal laws and regulations that affect people with disabilities;
- (c) coordinate or carry out programs designed to meet the problems of people with disabilities in coordination with programs of the Massachusetts office on disability;

(d) review and make recommendations about policies, procedures, services, activities and facilities of departments, boards and agencies of the city as they affect people with disabilities;

(e) provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability;

(f) coordinate activities of other local groups organized for similar purposes.

**Sec. 22-102. Authority to establish rules and regulations.**

The commission may, with the approval of the mayor and the knowledge of the director of planning and development establish its own rules and regulations to assure the greatest effectiveness in its organization and functions consistent with the purpose of this article and the provisions of the enabling legislation.

**Sec. 22-103. Meetings; reports.**

The commission shall meet as such not less often than once in every month, excepting July or August. The director of planning and development shall be given notice of said meetings and he or his designee shall have the right to be present. The commission shall keep accurate records of its meetings and actions, and shall file a report of its plans and actions to the mayor with such frequency and at such times as the mayor may request, but not less often than annually. The commission shall file an annual report with the board of aldermen which shall be printed in the city's annual report.

**Sec. 22-104. Gifts, grants.**

The commission is legally empowered to receive gifts of property, both real and personal, in the name of the city, subject to the approval of the board of aldermen. Such gifts shall be managed and controlled by the commission for the purposes of this section. Any federal or state grants and private gifts or donations received for these purposes shall be reflected by the commission in its annual budget to be approved by the mayor and board of aldermen. The commission may expend, with the approval of the mayor, such funds as may be appropriated for the purposes of this article. The commission shall annually prepare an operating budget, in a timely manner to permit formulation of the overall department of planning and development budget.

10 DEC 13 P 5:13  
 CITY CLERK  
 NEWTON, MA 02159

#373-10

#

DRAFT FOR DISCUSSION PURPOSES:

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO.

December , 2010

10 DEC 10 P 12:07  
CITY CLERK  
NEWTON, MA 02159

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

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended with respect to Section 20-13 Noise Control, as most recently amended by Ordinance Z-32, as follows:

- 1. Insert after paragraph (7) of Section 20-13(f) *Time Restrictions* the following new paragraph:

“(8) No outdoor group, club or team sports event, game, practice, or drill taking place on an athletic field shall commence prior to 7:00 a.m.

- 2. Delete, after the phrase “shall be fined in an amount not to exceed” contained in Section 20-13(j) *Penalties* the following language: “one hundred dollars (\$100.00) and insert in its place the following language: “three hundred dollars (\$300.00).

BE IT FURTHER ENACTED that the Revised Ordinances of Newton 2007, as amended be and are hereby further amended with respect to both subsection (c) Department of Inspectional Services and subsection (d) Police Department of Section 20-21, *Enforcing persons and revised ordinances subject to civil fine*, by:

- 1. Deleting the following language:

“Section 20- 13 Noise Control  
( ) Any Offense . . . . . \$50.00”

and by:

#373-10

2. Inserting in place thereof the following language:

“Section 20-13 Noise Control

- ( ) First offense ..... \$100.00  
in calendar year
- ( ) Second offense..... \$200.00  
in calendar year
- ( ) Third or subsequent offense .....\$300.00  
in calendar year”

Approved as to legal form and character:

DONNALYN B. LYNCH KAHN  
City Solicitor

Under Suspension of Rules  
Readings Waived and Adopted

EXECUTIVE DEPARTMENT  
Approved:

(SGD) DAVID A. OLSON  
City Clerk

(SGD) SETTI D. WARREN  
Mayor

**ARTICLE II. NOISE (Chapter 20 as amended through June 2009)****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.

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

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

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

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

(e) *Noise Pollution prohibited.*

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

(f) *Time Restrictions.*

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

*Maximum noise level dB(A) permitted:*

(1) *Vehicles*

Vehicle Class	Stationary or Moving
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 equipment.*

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*

(i) 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

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.

(ii) *Transition period.* Notwithstanding the maximum maintenance equipment noise levels listed in subsection (3)(i), maximum noise levels dB(A) for all yard, garden, or grounds maintenance equipment, excluding commercial chippers and vacuums shall be as follows:

1. Maximum noise level dB(A) permitted up to two (2) years after effective date of this Section:

a) Home tractor, leaf blower ..... 80

b) Lawn mower or trimmer ..... 75

2. Maximum noise level dB(A) permitted from two (2) years to four (4) years after effective date of this section, all equipment..... 70

- (4) *Maximum Noise Level Exclusions.* The following devices shall be exempt from the maximum noise limitations set forth in subsection (g)(2): jack hammers, pavement breakers; pile drivers, rock drills, provided that effective noise barriers are used to shield nearby areas from a condition of noise pollution. The time limitations contained in subsection (f)(2) shall still apply.
- (5) *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).
- (6) *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).
- (7) *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.
- (8) 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) *Permits for exemptions from this ordinance and for extensions of time to comply with this ordinance.*
- (1) The mayor or his designee may grant a permit for any activity otherwise forbidden by the provisions of this ordinance upon a determination by the mayor or his designee that compliance in the conduct of such activity would cause undue hardship on the person or persons conducting such activity or on the community, taking into account: (i) the extent of noise pollution caused by not requiring such compliance; and (ii) whether reasonable efforts have been made to abate the noise. The mayor or his designee shall establish appropriate procedures for the processing of requests for such permits, including such hearings as the mayor or his designee deems appropriate. In granting any such permit, the mayor or his designee may impose such appropriate conditions as he deems necessary pursuant to this section. Copies of all such permits shall be filed with the clerk of the board of aldermen promptly after issuance. Promptly after issuance, copies of all such permits shall be filed with the clerk of the board of aldermen and to each ward alderman for the affected ward.

(2) The mayor or his designee may extend to a specified date the time for compliance with this ordinance in the case of any particular activity with respect to which a determination is made that such extension is necessary to provide a reasonable opportunity for such activity to be brought into compliance. No such extension shall be granted which has the effect of exempting such activity from compliance with this ordinance. The mayor or his designee shall establish appropriate procedures for the processing of requests for such extensions of time, including such hearings as the mayor or his designee deems appropriate.

(i) *Judicial Review.* Any person aggrieved by the grant or denial of a permit pursuant to subsection (h)(1) or an extension of time pursuant to subsection (h)(2) may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

(j) *Penalties.* Violation of any of the provisions of this section shall constitute a misdemeanor and any person, upon conviction of such violation, shall be fined an amount not to exceed one hundred dollars (\$100.00). Each day that such violation continues shall be considered to be a separate offense.

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

(l) *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)

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

**Secs. 20-14—20-19. Reserved.**

### ARTICLE III. CIVIL FINES/NON-CRIMINAL DISPOSITION

#### Sec. 20-20. Certain ordinance violations subject to civil fine.

(a) As an alternative to initiating criminal proceedings, the sections of these revised ordinances which are listed in section 20-21 may be enforced in the manner provided in General Laws c. 40, section 21D.

(b) Any such enforcing person, as listed in section 20-21, who takes cognizance of a violation of such an ordinance may give to the offender a written notice to appear before the clerk of the district court for Newton at any time during the court's office hours, not later than twenty-one (21) days after the date of such notice.

(c) *Non-criminal disposition upon payment of notice of violation.* Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense

charged, either personally or through a duly authorized agent or by mailing to the city clerk together with the notice such specific sum of money as established under section 20-21 as penalty for violation of the ordinance. Upon receipt of such notice and payment, the city clerk shall forthwith notify the district court clerk of such payment and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this subsection shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of a district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

(d) *Right of appeal and hearing in the district court.* If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section and G.L. c. 40 § 21D, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money established as a penalty as aforesaid or such lesser amount as the judge, clerk or assistant clerk shall order, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that the violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this subsection shall operate as a final disposition of the case. Proceedings held pursuant to this subsection shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.

(e) *Failure of appeal and return to criminal process.* If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money established as a penalty after a hearing and finding as provided in subsection (d), the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a criminal complaint for the violation of the appropriate ordinance. (Ord. No. V-255, 8-9-99)

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

(c) DEPARTMENT OF INSPECTIONAL SERVICES: The commissioner of inspectional services, and/or his or her designee, and building inspectors of the department of inspectional services shall be authorized to issue written notice of the following violations:

PENALTY

Sec. 20-13. Noise Control

- ( ) Any Offense..... \$50.00
- ( ) Warning ..... \$0.00

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

PENALTY

Sec. 20-13. Noise Control

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