

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, FEBRUARY 9, 2011

Present: Ald. Sangiolo, Linsky, Baker, Blazar, Hess-Mahan, Merrill, Rice, Fischman

Also Present: Ald. Gentile

City Staff: Marie Lawlor (Assistant City Solicitor), John Lojek (Commissioner of Inspectional Services), Marc Welch (Director of Urban Forestry), Captain Marzilli (Police Department), Bob Derubeis (Commissioner of Parks and Recreation), David Olson (City Clerk), Rebecca Smith (Committee Clerk)

REFERRED TO PROGRAMS 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]

ACTION: **HELD 7-0 (Linsky not voting)**

NOTE: Discussion began with the acknowledgment of a letter sent in from Attorney Jason Rosenberg. In the letter Mr. Rosenberg stated his concern that this ordinance could be applied to the golf courses. Ald. Gentile made it clear that it was never his intention to preclude someone from playing golf before 7am, only teams on athletic fields which disturb the surrounding neighbors. Because of this concern, Ald. Gentile asked that the Committee hold this item, but proceed with voting on 373-10(2).

Ald. Sangiolo opened the meeting to public comment. Mr. Mandeep Sawhney, Forest Avenue, Auburndale was the first to speak. He said that this is a huge issue for him and his family. The athletic fields for Lasell are in such close proximity to the surrounding homes and their practices in the early morning create much disturbance. He supports this ordinance change in hopes that it will make his home more habitable. The next speaker, Richard Sewall, 83 Aspen Ave, Auburndale, stated that the practices start far too early and since it's a residential area it's very disruptive. He also spoke in favor of the fines asserting that should someone violate the ordinance they should receive a more significant fine to deter such behavior. Frederick Levy, of the Newton Country Day School, commented that Newton Country Day does not currently have practices outside before 7am but he requested that there be a provision in the ordinance that would allow for such activity if, under extraordinary circumstances, the school should have to schedule a morning practice. Ald. Gentile stated that a provision in the ordinance currently exists that allows for people to apply for waivers for unusual circumstances. This provision would apply to any changes made through this amendment.

Ald. Hess-Mahan shared with the Committee that Lasell's attorney, as well as the other college's attorneys, were told that this item would be resolved by neighborhood councils; because of this, representatives from the college did not attend the meeting.

Ald. Sangiolo spoke to this, explaining that she was informed that the Mayor's office contacted the colleges to tell them that the public comment wasn't going to be taken up. (*Please note that in a follow-up email exchange with the Mayor, the Mayor said no one from his staff contacted the colleges suggesting that the public comment wasn't going to take place – so it is still unclear why they decided not to attend). It was agreed upon that going through the neighborhood council is preferable even though Ald. Gentile has attempted this in the past and has been unsuccessful.

Commissioner Lojek shared his opinion on the item, stating that definitions should be added for specificity. Ald. Gentile agreed that the draft amendment should be look at by the law department to make sure it is as clear and specific as possible. Commissioner Lojek also asked whether there is a decibel level associated with this amendment. Ald. Gentile confirmed that there is not and that there shouldn't need to be, citing the fact that in the current version of the noise ordinance certain activities cannot commence before a certain hour regardless of a decibel level.

Ald. Hess-Mahan suggested that this may be a zoning issue/land use restriction as opposed to a noise regulation as it is regulating the use of fields more so than noise. Ald. Gentile pointed out that contractors and landscapers are prohibited from commencing outdoor construction activities prior to 7 a.m. and saw a similarity with that type of use restriction under the noise ordinance. He requested that the law department look into this to determine if this is being dealt with the right way. Alderman Baker seconded Ald. Hess-Mahan's request and further stated that the ordinance must be specific in order to only affect the activities that it is intended to affect. Seeing as no other comments were made Ald. Merrill moved to hold 373-10 which the Committee carried unanimously. Ald. Gentile requests that the Committee go to the site before this item is discussed again and see the proximity of the field to the houses.

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#373-10(2) **ALD. GENTILE, HARNEY, SANGIOLO** requesting an amendment to §20-13 of the City of Newton Revised Ordinances to adjust the structure, as well as increase the amount of the fines associated with non-compliance of §20-13, **Noise Control**, to reflect the following: first violation: issuance of a warning; second violation: \$100 fine; third violation: \$200 fine; fourth violation: \$300 fine. [01-05-11 @ 10:00 PM]

ACTION: **APPROVED 7-0 (Linsky not voting)**

NOTE: The discussion focused on whether or not a warning should be included in the ordinance. Ald. Baker suggested that a warning for a first violation seems reasonable especially since the fines are being increased by a significant amount. He also recognized that it could cause an issue where people intentionally and knowingly violate the ordinance since they know they'll only receive a warning. Ald. Baker asked Captain Marzilli for his opinion. Captain Marzilli explained that not having a warning puts a lid on undesirable activity more easily and more quickly than just issuing a warning. He also noted that the way in which the ordinance amendment is worded will affect the enforcement of the amendment. Currently, whether to issue a citation or a warning on the first offense is up to the discretion of the officer due to the wording of the ordinance. Captain Marzilli explained that warning someone is, generally, enough when the person

is acting without malicious intent or without knowing they are in violation, which is often the case.

When asked about how these fines would accrue, Ald. Gentile stated that the warning/fines would be cumulative throughout the calendar year. Once we advance to the next year one's record would reset. Ald. Gentile explained that this ordinance change is an attempt to compel institutions and individuals to abide by the ordinance since so many haven't in the past. He supports the warning being written into the fine structure because he believes that many people may unintentionally violate the ordinance and a \$100 fine is substantial for one mistake. With that said, Ald. Gentile would still like the ordinance to be more formal and enforceable so it isn't always discretionary. He wants one warning to be allowed but anything further to receive a fine so that the behavior is curbed. The Committee moved to approve the item as initially docketed, which carried unanimously.

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]

ACTION: **FINANCE VOTED NO ACTION NECESSARY ON 3/8/10**
HELD 8-0

NOTE: Items 360-09(2) and 360-09(3) were discussed jointly. Bob DeRubeis, Commissioner of Parks and Recreation, joined the table to discuss this item. Commissioner DeRubeis outlined the fees proposed to those given access to off-leash areas: Newton residents will be charged \$50 to license their dog for an off-leash park; non-Newton residents will be charged \$100; Newton professional dog-walkers will be charged \$250 for their first medallion and \$75 for each additional medallion; Non-Newton professional dog-walkers will be charged \$350 for their first medallion and \$100 for each additional medallion. The Parks and Recreation Commission reviewed this proposal and voted in favor of it. Fees collected from the permits will go towards maintenance of the 24 proposed off-leash fields (aerating the fields, fertilizer, seeding, etc.), fencing, signage and enforcement. For enforcement, Commissioner DeRubeis spoke with the Chief of Police who suggested that two retired individuals with past experience in off-leash areas might be available to work part time. The Commission agreed that this is a sensible course of action.

Marie Lawlor, Assistant City Solicitor, spoke briefly about the Recreational Use Statute, which states that any owner of land who opens that land to recreational use, as long as no fee is charged, is given immunity from lawsuits should something happen on that land. Once you start charging a fee for the use of the land the land owner loses that immunity. It is likely that in this situation the City will lose immunity to at least the people who pay the fee. It is unclear right now whether that would apply to those who do not pay a fee for the off-leash program.

Attorney Lawlor also stressed that funds collected through this program must have a direct relation to the costs and must be applied only to the running of program. In terms of enforcement, we must be sure to only pay officers for time directly spent enforcing the program. She also explained that these fees are not entrance fees for the parks, they are fees for the privilege of letting dogs go off-leash, opposed to our general

rule that dogs are leashed. Ald. Baker clarified that having an off-leash license will only allow dogs to be off-leash in the designated areas. This does *not* allow dogs to be off-leash in any other areas of the City.

Dog walkers will be required to obtain licenses for the dogs they are walking. The dog owner does not need to license their dog for off-leash areas if the dog is only going to be taken to off-leash parks by the dog walker. However, should the dog-owner want to take the dog to an off-leash park, the dog owner would be required to obtain a license for the dog. The process for licensing dogs for the off-leash program will start at the City Clerk's office, just as standard licenses do. David Olson, City Clerk, spoke to this stating that in future years the annual dog license mailing will contain information for both off-leash licenses and standard licenses. Since this year's mailing has already gone out, the Clerk's office will have to send out a second mailing and issue the dogs. In future years, each dog will only be required to have one tag of a certain design: one design will denote that the dog is licensed, and one design will denote that the dog is licensed and licensed off-leash.

Mr. Olson and Commissioner DeRubeis agreed that 5% of the fees collected should be given to the Clerk's office to offset the costs of mailings and materials to create the dog tags. Mr. Olson requested that the Committee approve item 360-09(3) as amended to create two accounts: one controlled by the City Clerk for 5% of the fees collected, and one controlled by the Commissioner of Parks and Recreation for the remaining 95% of the fees. A motion was made to approve the creation of two revolving accounts and was approved unanimously.

Attorney Lawlor advised the Committee that an amendment to the off-leash dog ordinance was needed to allow for the Commissioner of Parks and Recreation to set reasonable fees; currently, the ordinance does not give the Commissioner that responsibility. The Committee decided to docket a new item (360-09(4)) giving the Commissioner this authority. This item will be taken up at the next Programs and Services meeting (February 23, 2011) The Committee unanimously voted to create the docket item and to hold the current item.

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]

ACTION: **APPROVED AS AMENDED 8-0**

NOTE: See 360-09(2) summary.

Respectfully Submitted,

Amy Sangiolo, Chairman

#373-10

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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

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NEWTON, MA. 02159

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February 9, 2011

Amy Sangiolo, Chairman
Programs and Services Committee
Board of Aldermen
City Hall
Newton, Ma 02459

Re: #373-10- Regulation Of Hours Of Athletic Activities Under Noise Ordinance

Dear Chairman Sangiolo:

I represent Brae Burn Country Club. The Club has great concern for what it believes is an unintended consequence of certain language such as "athletic activities" and "athletic practice" in the proposed amendment. Such language is easily interpreted to bar golf club members from teeing off prior to 7 AM.

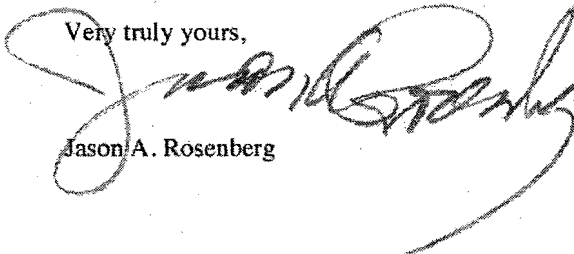
I believe other country clubs share the same concern. I do not know if the Commonwealth Golf Course knows of the issue, but I am sure it too would join in urging both caution and clarification.

Alderman Gentile was kind to get back to me. He expressed his sense that the amendment was never intended to extend to activities such as golf.

I urge the proposed amendment be clarified to eliminate an overbroad application to such activities as golfers playing prior to 7 AM.

Please call me if you have any questions. I thank you for your attention in this matter.

Very truly yours,


Jason A. Rosenberg

JAR:arj

Off-Leash Area Fee Process

