

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE AGENDA

WEDNESDAY, JANUARY 21, 2009

7:45PM – ROOM 222

ITEMS SCHEDULED FOR DISCUSSION:

Re-appointment by His Honor the Mayor

#24-09 ELLEN KRASNEY, 79 Chestnut Street, Newton, re-appointed as a member of the NEWTON COUNCIL ON AGING for a term to expire on November 1, 2011. (60 days: 03/19/09) [01/06/09 @ 2:49 PM]

#2-09 BOARD OF ELECTION COMMISSIONERS recommending that the Board of Aldermen establish September 15, 2009 as the date of the Preliminary Election and November 3, 2009 as the date of the Municipal Election pursuant to Article 8 of the City Charter. [12-22-08 @3:36PM]

REFERRED TO PROGRAM & SERVICES AND FINANCE COMMITTEES

#465-08 ALDERMEN HARNEY, GENTILE AND SANGIOLO requesting the Newton Retirement Board seeking aldermanic adoption and mayoral approval of special legislation that would authorize it to award to Frank Albano a superannuation retirement allowance in accordance with G.L. c.32, Sec. 5 notwithstanding the provisions of G.L. c.32, Sec. 3(6)(e) requiring a former member who re-enters active service to remain in active service for at least two consecutive years before becoming eligible to receive a retirement allowance. [11-17-08 @ 10:26 PM]
FINANCE APPROVED on 01-12-09

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#29-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend three hundred fifty-eight thousand five hundred forty-four dollars (\$358,544) from Free Cash for the purpose of supplementing the snow and ice budget in the Parks and Recreation Department as follows: \$35,571 for overtime; and \$322,973 for equipment. [01/13/09 @ 4:23 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#30-09 HIS HONOR THE MAYOR requesting authorization to appropriate and expend fifty five thousand dollars (\$55,000) from Marathon Receipts for the purpose of funding park improvements and repairs as follows: \$30,000 to replace Fibar ground covering and broken or unsafe playground

equipment; and \$25,000 in seed money for the installation of playground equipment at the Burr School and Solomon Schechter Playground.

[01/13/09 @ 4:22 PM]

- #292-08(2) PROGRAMS AND SERVICES COMMITTEE requesting that His Honor the Mayor develop a written policy of standards and processes that could be uniformly followed by community groups for the use of the branch library buildings. [11-07-08 @ 11:11 AM]

REFERRED TO PROG. & SERV., PUB. FAC., AND LAND USE COMMITTEES

- #329-08 ALD. JOHNSON, ALBRIGHT & LINSKY requesting amendment to §20-13, *Noise Ordinance*, of the City of Newton Ordinances to prohibit the City from exceeding the parameters of time and decibel restrictions unless it receives approval from the Land Use Committee of the Board of Aldermen. [09-02-08 @ 12:00 PM]

- #329-05(2) ALD. PARKER & JOHNSON requesting further amendment to the noise ordinance to: improve enforceability and effectiveness of the ordinance; remove the source-based exemption for noise generated by birds, and; address the differential treatment of construction noise on weekends. [08-26-08 @ 3:15 PM]

- #422-06 ALD. HESS-MAHAN requesting creation of an ordinance prohibiting the use of portable gasoline-powered leaf blowers within the City limits.
PROGRAMS & SERVICES APPROVED AS AMENDED 4-2-2 (Brandel, Sangiolo opposed; Baker, Merrill abstaining) on 3/19/08 RECOMMITTED TO PROGRAMS & SERVICES ON 4-22-08 HELD 07-09-08

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

REFERRED TO PUBLIC FACILITIES AND PROGRAMS & SERVICES

- #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 PS&T AND PROGRAMS & SERVICES COMMITTEES

#391-08 HIS HONOR THE MAYOR requesting Board of Aldermen approval to
(#122-92(3)) petition the General Court for an amendment to the legislation that
governs the appointment of a Police Chief in the City of Newton in order
to add two members to the committee: an additional representative of the
Newton Superior Officers Association and an additional citizen member.
[11-4-08 @12:31 PM]

#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 PROGRAMS & SERVICES AND FINANCE COMMITTEES

#274-08 ALD. JOHNSON AND SANGIOLO proposing a RESOLUTION to His
Honor the Mayor requesting that he create a plan to move the Child Care
Commission to a self-sustaining model for FY2010.
[07-17-08 @ 9:53 AM]

**REFERRED TO PROG. & SERV., ZONING & PLANNING, PUB. FACIL.,
PUB. SAFETY 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]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#272-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor
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 Human Resources Departments. [07-17-08 @ 9:53 AM]

REFERRED TO PROG. & SERV. AND PUBLIC FACILITIES COMMITTEES

#271-08 ALD. JOHNSON proposing a RESOLUTION to His Honor the Mayor
requesting that he work with the Board of Aldermen, the Parks and
Recreation Department, and the Department of Public Works in order to
determine the most effective and efficient way to organize the work of
managing our public resources. [07-17-08 @ 9:53 AM]

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]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #261-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the Director of Arts in the Parks' salary to the Arts in the Parks revolving account. [07-08-08 @ 1:29 PM]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #259-08 ALD. SANGIOLO requesting discussion with the Executive Department regarding moving the salaries of the Parks & Recreation Commissioner and the Recreation Programs Director to the revolving accounts for various programs.
[07-08-08 @ 1:28 PM]

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]

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

- #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]
- #154-08 ALD. JOHNSON requesting to establish a definition and appropriate usage of the Committee of the Whole of the Board of Aldermen as are all committees of the Board. [4-10-08 @9:09 AM]
- #153-08 ALD. JOHNSON requesting to establish a definition and appropriate usage of the Long Range Planning Committee of the Board of Aldermen as are all committees of the Board. [4-10-08 @9:09AM]
- #130-08 ALD JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen requiring that referral of any and all new business, communications, petitions and orders docketed before the Board of Aldermen be restricted to one or more of the standing committees of the Board of Aldermen: Land Use, Programs and Services, Public Safety and Transportation, Zoning and Planning, Finance, Real Property Reuse, Post Audit and Oversight, Public Facilities and Committee on Community Preservation. [03-24-08 @ 9:11 AM]
- #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]

- #111-08(2) ALD. JOHNSON and PARKER requesting regularly scheduled updates and discussion each month in regard to the offering of a RESOLUTION to the Mayor, President of the Board of Aldermen, and Chair of the School Committee that they, during the budget development and review process, identify short term tactics to improve the City's operational efficiency and effectiveness. In addition, they establish a citizen advisory group to assist in planning for additional tactics and strategies to improve the City's operational efficiency and effectiveness in future fiscal years, and report progress to the Board of Aldermen, School Committee and the public before any vote is taken by the citizens of Newton for any operational override. [04-01-08 @ 11:22 AM]

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]
- #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]
- #262-07 ALD. VANCE AND HESS-MAHAN seeking approval by the Board of Aldermen of a home rule petition to the General Court that would authorize an amendment to the charter of the City of Newton that would change the length of terms of the members of the Board of Aldermen to three years and would provide for electing one-third of the aldermen, one from each ward, every year. [08-22-07 @ 3:53 PM]

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

- #83-07 ALD. YATES requesting that the City of Newton take all possible steps to persuade the General Court to adopt the proposition of Governors

Municipal Partnership that would allow the City to reduce employee health insurance costs by joining the Group Insurance Commission.

[02-27-07 @ 10:21 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 PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#267-06(3) ALD. PARKER, BURG, LINSKY, FISCHMAN, HESS-MAHAN, VANCE, HARNEY, JOHNSON, & DANBERG proposing Home Rule Legislation authorizing the City of Newton to apply the ordinance proposed in item #267-06(2) to assets held by the City's retirement system.

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.

HELD 5/7/08

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#264-03(3) ALD. JOHNSON AND BAKER requesting update on the work of the Taxation Aid Committee established by the Board of Aldermen in March 2004 in administering aid to the elderly taxation fund.

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

- #309-01 ALD. PARKER requesting increase in the income eligibility level of the 30% water/sewer discount for low-income senior citizens.
- #346-99 ALD. SANGIOLO requesting creation of an ordinance that would prohibit dogs (leashed or unleashed) from all elementary school playgrounds.

Respectfully Submitted,

Marcia Johnson, Chairman

ELECTION COMMISSION

#2-09



1000 Commonwealth Avenue
Newton, MA 02459

Craig A.J. Manseau
Executive Secretary

David J Mofenson, Chairman
Frances E. Shaer • Fay G. Cohen • Kenneth R. Hartford

Diana A. Forgione
Deputy Executive Secretary

Mayor
David B. Cohen

December 22, 2008

08 DEC 22 PM 3:36
CITY CLERK
NEWTON, MA 02159

Honorable R. Lisle Baker and
Members of the Board of Alderman
City Hall, Room # 101
Newton, MA 02459

Dear President Baker and
Members of the Board of Alderman,

This letter is in regards to setting up the Municipal Election Calendar according to section 8-3 of the charter of the City of Newton. The City Charter requires that the regular Municipal Election be held on the first Tuesday following the first Monday in November in each odd-numbered year. In 2009 this date is Tuesday, November 3rd. Additionally, it allows the Board of Alderman to fix the date of the Preliminary Election for the purpose of nominating candidates, which shall be a Tuesday. Massachusetts General Law requires these preliminary elections be held not later than twenty-eight days before the regular election.

The Board of Election Commissioners recommends that the Board of Alderman establish Tuesday, September 15, 2009, as the date of the Preliminary Election, thereby causing the enclosed Municipal Election Calendar to become effective.

Respectfully, For the Board of Election Commissioners

Craig A. Manseau
Craig A.J. Manseau, Executive Secretary



Mayor
David B. Cohen

ELECTION COMMISSION

1000 Commonwealth Avenue
Newton, MA 02459

David J. Mofenson, Chairman
Frances E. Shaer • Fay G. Cohen • Kenneth R. Hartford

#2-09

Craig A.J. Manseau
Executive Secretary

Diana A. Forgione
Deputy Executive Secretary

MUNICIPAL ELECTION CALENDAR 2009

- | | |
|---|---|
| Thursday, July 23, 5:00 p.m. | Last day and hour to obtain Nomination Papers. |
| Tuesday, July 28, 5:00 p.m. | Last day and hour for submitting Nomination Papers to the Election Commission for certification of signatures. |
| Tuesday, August 11, 5:00 p.m. | Last day and hour for filing withdrawing Nomination Papers with the Election Commission. |
| Wednesday, August 26, 8:00 p.m. | Last day and hour to register Voters for the Preliminary Election. |
| Tuesday, September 15, 2009 | PRELIMINARY ELECTION |
| Tuesday, September 22, 5:00 p.m. | Last day and hour to decline Preliminary Nomination. |
| Tuesday, September 29, 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 6, 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 14, 8:00 p.m. | Last day and hour to register Voters for the Municipal Election. |
| Tuesday, November 3, 2009 | MUNICIPAL ELECTION DAY |

08 DEC 22 PM 3:36
CITY CLERK
NEWTON, MA 02459

INTEROFFICE MEMO

To: Members of the Finance Committee and Programs & Services Committee

**From: Marie M. Lawlor
Assistant City Solicitor**

Date: January 9, 2009

**Re: Item #465-08 Frank Albano, Request for Home Rule Petition
Summary of Facts and Issue**

The Newton Retirement Board seeks a home rule petition on behalf of a former employee, Frank Albano. This special act would exempt Mr. Albano from the usual retirement law requirement that a member of the retirement system who leaves service, withdraws his retirement account and later returns to service must work for an additional two consecutive years before becoming eligible for superannuation retirement (the two-year rule), G.L. c. 32, §3(6)(e).

The facts are as follows. Frank Albano was employed by the City of Newton and became a member of the retirement system in 1978. He had eighteen years of service with the City when he left service in 1996, withdrawing his retirement account. Mr. Albano returned to service with the City in August 2003. At that time he contacted the Retirement Board office and requested creditable service buy-back information and a potential retirement benefit estimate.

Relying on language contained in the retirement guide published by the Public Employee Retirement Administration Commission (PERAC), Kelly Byrne, Executive Director of the retirement board, counseled Mr. Albano about redepositing his account, and advised him that the two-year rule would not apply to him since he had over 10 years of creditable service prior to his last separation. He was specifically advised, based upon the PERAC guide's language, that upon redeposit of his retirement account, he would be eligible to retire upon reaching the age of 55 regardless of the length of time he might continue to work for the City. Relying on that information, Mr. Albano redeposited his retirement account (thus "buying back" his 18 years of creditable service), and shortly thereafter left service in September 2003 fully believing he would be eligible to retire upon reaching age 55 in August 2008.

The language Ms. Byrne relied on was this:

“...No member who is reinstated or reenters or who transfers or re-establishes his membership is eligible to receive a superannuation, ordinary disability, or termination retirement allowance until the member has been in active service for at least two consecutive years following the start of the new employment. **This two-year requirement will not apply if the member was eligible to receive a termination retirement allowance or had 10 years of creditable service prior to the last separation from public service.**” *Massachusetts Public Employee Retirement Guide* (Revised 6.2000) (emphasis supplied).

The guide made no distinction between members who did and members who did not withdraw their retirement funds.

On April 29, 2008, PERAC issued a memorandum to retirement boards that contradicted the two-year rule language contained in the guide. Upon inquiry from Ms. Byrne, PERAC replied by letter that although the language in the 2000 guide was “admittedly ambiguous,” the two-year rule does apply to employees who withdraw their funds then later return to service. They further stated that this “ambiguity” was cleared up in a revised retirement guide issued in February 2006.

The Board asked me to research this issue. I advised the Board that PERAC’s current interpretation of the law is correct, and that without the special act, Mr. Albano will be ineligible to retire. The Board strongly believes that the language contained in the 2000 Retirement Guide, upon which Ms. Byrne rightly relied, was not merely ambiguous, but was misleading on its face.

The Board further believes that this special act is necessary to prevent an injustice to a long term employee.

Draft ACT:

AN ACT AUTHORIZING THE CITY OF NEWTON RETIREMENT BOARD TO
GRANT A SUPERANNUATION RETIREMENT ALLOWANCE TO FRANK
ALBANO

Notwithstanding any general or special law to the contrary, and in particular the provisions of G.L. c.32, §(3)(6)(e) requiring a former member who re-enters active service to remain in active service for two consecutive years prior to becoming eligible for a retirement allowance, the Newton Retirement Board is authorized to grant to Frank Albano a superannuation retirement allowance in accordance with the provisions of G.L. c. 32 §5.

09 JAN -6 PM 2:35
CITY CLERK
NEWTON, MA. 02159

Application for Voluntary Superannuation Retirement

Form Last Revised: August, 2003

Retirement Board: Please place your address and phone number here. ▶

Newton Retirement System
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449
TEL: (617) 796-1095
FAX: (617) 796-1098

Member's Last Name First M.I. Social Security #

Eligibility Requirements for Superannuation Retirement

If you are a member of Group 1 or 2, you are eligible to retire at any age with at least twenty years of creditable service. If you last became a member of a retirement system prior to January 1, 1978 you may, as a member in service, retire at 55 with any number of years of service. If you last became a member of a retirement system on or after January 1, 1978 and you have less than 20 years of creditable service, you must have at least ten years of creditable service and be at least age 55 to retire. If you are a member of Group 4, you are eligible to retire at any age with 20 years of creditable service or at age 55. The amount of your allowance depends on your age, creditable service, group classification and salary.

- If you are an active employee or on leave of absence, you can apply for retirement with the board no earlier than four months before your intended date of retirement.

Applicant Information

To the Retirement Board:

I respectfully request retirement for superannuation in retirement Group as of with years and months of creditable service under the provisions of G.L. c. 32, §§ 1-28.

In connection with my application, I certify the following:

I AM RETIRING FROM

Agency or Department* Title/Position

MY PRESENT ADDRESS

Street and Number

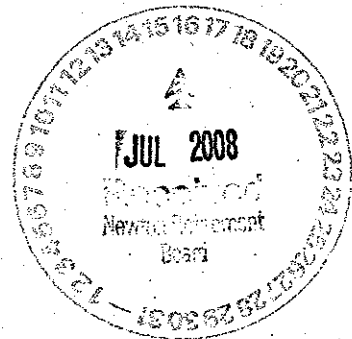
City/Town State Zip Phone #

Date of Birth Social Security #

MY ADDRESS AFTER RETIREMENT (Enter only if different from present address)

Street and Number

City/Town State Zip Phone #



Application for Voluntary Superannuation Retirement

Albano	Frank	J.	022 -44 4248
Member's Last Name	First	M.I.	Social Security #

Employment History

Please supply all periods of service and specify any temporary or irregular service.

I was also employed by other governmental units/political subdivisions in the Commonwealth of Massachusetts as follows:

UNIT	DEPARTMENT	POSITION	DATES EMPLOYED	
			From	To
			From	To
			From	To

• Are you presently receiving a retirement allowance from any retirement system of any governmental units/political subdivisions within the Commonwealth of Massachusetts? Yes No
 If yes, please specify systems, date of retirement and retirement type.

• Are you a veteran? Yes No

If yes, please specify military branch and dates of active service.

• Have you been officially investigated for or charged with misappropriation of funds from your employer or convicted of any crime related to your office or position? Yes No
 If yes, please provide documentation.

• If you are applying for retirement by reason of resignation, failure of re-election or reappointment, removal or discharge under the provisions of G.L. c. 32, § 10; please briefly summarize the facts:

Resignation/Retirement

I sign this application under the pains and penalties of perjury. I affirm that the information presented in this application is correct, complete and accurately presented. I understand that giving false or incomplete information may subject me to the loss of my benefits as well as civil and criminal penalties.

Applicant's Signature Frank Albano Date 7/8/08

Applicant's Name (Print) Frank J. Albano

The following must be filed by you or your beneficiary with your retirement board:

- A properly completed *Application for Voluntary Superannuation Retirement* (this form).
- A properly completed *Choice of Retirement Option Form at Retirement*. (Included in retirement package).
- ~~Copy of your birth certificate, marriage certificate, divorce certificate, and/or other records applicable to your situation.~~

*For those retiring from regional or county retirement systems, please identify the community.

Newton Contributory Retirement System

CITY HALL
1000 COMMONWEALTH AVENUE
NEWTON CENTRE, MASSACHUSETTS 02459-1449

Telephone
(617) 796-1095

Fax
(617) 796-1098

TDD-TTY
(617) 796-1089

E-Mail:
kbyrne@newtonma.gov

Internet
www.ci.newton.ma.us

BOARD
Nunzio J. Piselli
Appointed Member
CHAIRMAN

Francis P. Capello
Elected Member
VICE CHAIRMAN

David C. Wilkinson
Ex-Officio Member

Paul Bianchi
Elected Member

Richard C. Heidlage
Appointed Member

+

Kelly Byrne
Director

Donna M. Cadman
Administrative Assistant

July 7, 2008

Mr. Frank Albano
318 Auburndale Ave
Auburndale, MA 02466

Dear Mr. Albano;

Enclosed please find a copy of a memorandum issued by the Public Employee Retirement Administration Commission (PERAC) dated April 29, 2008 regarding "Former Members Returning to Public Employment". Upon receipt of this memorandum I made a verbal inquiry to PERAC regarding the "two year rule" explained on page two and how it impacted your expectation to defer receipt of your retirement allowance to age 55 (August 15, 2008). I received a written response from PERAC dated May 22, 2008, copy enclosed.

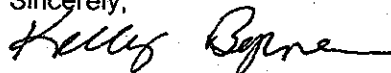
The Newton Retirement Board reviewed this correspondence at its last monthly meeting held on June 18, 2008. While PERAC has admittedly agreed that the language I relied on in the Massachusetts Public Employee Retirement Guide (Revised 6.2000) was "ambiguous", the Retirement Board feels that the language contained in their guide was clearly wrong and misleading. The Board also feels that a positive outcome through an appeal process to allow your deferred retirement at age 55 would be very unlikely as the statutory language contained within MGL Chapter 32 (public pension law) governing the "two year rule" would prevail.

Due to the unfortunate circumstance this has left you faced with, the Retirement Board is willing to request a Home Rule Petition (also called a "Special Act") with the City of Newton Board of Aldermen to exempt you from the provisions of the "two year rule" so as to allow your retirement at age 55. This process is as follows: The Retirement Board will docket the petition for the special act with the Board of Alderman (BOA). The BOA will refer the request to the Programs and Services Committee for discussion and recommendation. If approved in Committee, the item will be referred back to the BOA. If approved by the BOA, the item next goes to the Mayor for authorization and signature. At this point, the Mayor's office will file the necessary petition and draft bill for the special law with the state legislature.

In discussing this option with you on the phone last Friday you agreed to have the Retirement Board begin this process. I will provide you with copies of all correspondence relating to the filing of this Act, once prepared by the City Solicitor's Office.

In the meantime, please complete the enclosed retirement forms, for an effective date of retirement of August 15, 2008 pending approval of the Special Act.

Sincerely,



Kelly Byrne, Director

Cc: Marie M. Lawlor, Asst. City Solicitor


Enclosures

NEWTON RETIREMENT BOARD

Newton City Hall
 Newton Centre, MA 02459-1449

 Tel (617) 796-1095
 Fax (617) 796-1098
 E-mail: kbyrne@newtonma.gov

MEMORANDUM

DATE: May 29, 2008
TO: Retirement Board Members
FROM: Kelly Byrne, Director 
RE: PERAC MEMO# 19/2008 – Frank Albano

After reading the enclosed PERAC Memo# 19/2008 (Pg. 2, paragraph 1), I questioned how this would apply to our inactive member Frank Albano. I contacted PERAC and left a voice mail message for further clarification, which resulted in their written response, copy enclosed, dated May 22, 2008.

HISTORY:

03/28/78	Mr. Albano became a member of the Newton Retirement System.
05/10/96	Mr. Albano terminated his employment with the City of Newton. (Age 42)
09/16/96	A Rollover of Mr. Albano's annuity savings fund was issued.
08/11/03	Mr. Albano became a member of the Newton Retirement System.
09/10/03	At Mr. Albano's request, buyback information and a potential retirement benefit estimate was sent to Mr. Albano.
09/19/03	Mr. Albano terminated his employment with the City of Newton.
09/23/03	A buyback rollover payment was received for Mr. Albano's prior service (18 yrs., 1 mos.)

When Mr. Albano requested the buyback information and a potential retirement benefit estimate in September of 2003, I copied page 20 & 21 of PERAC's retirement guide and included with his enrollment form. I relied on the language stating that the "Two year requirement will not apply if the member was eligible to receive a termination retirement allowance or had 10 years of creditable service prior to the last separation from public service."

Mr. Albano had 18 yrs., and 1 mos. of service prior to his last separation of public service, so it appeared that he met the minimum 10 year service requirement stated in the PERAC guide. I believe I also had a conversation with Atty. Barbara Phillips at PERAC to further confirm that he would be waived from the 2 year reemployment requirement because he had the minimum 10 years of service at the time he last separated from (public) service. I now realize a written opinion regarding this issue should have been requested from PERAC in September 2003.

I've copied Marie everything. She and Dick will have to review and advise the Board at the June 18, 2008 meeting if PERAC has correctly clarified that Mr. Albano will not be eligible to retire until he has two years of consecutive service.

Thank you.

cc: Atty. Marie M. Lawlor

MEMORANDUM #19, 2008

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
Five Middlesex Avenue, Suite 304, Somerville, MA 02145
Ph 617 666 4446 | Fax 617 628 4002 | TTY 617 591 8917 | www.mass.gov/perac
Domenic J. F. Russo, *Chairman* | A. Joseph DeNucci, *Vice Chairman*
Mary Ann Bradley | Paul V. Doane | Kenneth J. Donnelly | James M. Machado | Donald R. Marquis
Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Former Members Returning to Public Employment

DATE: April 29, 2008

The Commission has received several inquiries recently regarding the treatment of former members of a retirement system who return to public employment. Following is a brief summary of several scenarios.

Former Member Withdrew Funds From System:

A current member of a retirement system, who had prior public service but who had withdrawn his or her funds from the system before a retirement benefit was paid to him or her, may make a buyback of the previously withdrawn funds to receive credit for the prior period of service. The payment would be made to the retirement system pertaining to the governmental unit for which he or she is currently employed and would equal the money withdrawn along with buyback interest. The buyback interest rate is one-half (1/2) the actuarial assumed interest rate of the system where the redeposit is being made. If the actuarial assumed interest rate is 8.25%, the buyback interest rate would be 4.125%.

For example, assume a member was separated from service and withdrew funds in the amount of \$45,000 on January 1, 2000. In January, 2007, he or she again becomes a member in a retirement system (note: this system may or may not be the same as the prior system). Upon again becoming a member, he or she may redeposit this money (along with buyback interest) in the new retirement system to purchase his or her prior service. If we assume the actuarial assumed interest rate is 8.25% in the new system, he or she would owe approximately \$59,900 (the initial amount of \$45,000 plus compound interest of \$14,900 determined at the rate of 4.125% for 7 and 1/12 years).

Please note that pursuant to the provisions of G.L. c. 32, §3(2)(a)(iv), a former member who had withdrawn his or her funds from the system would again become a member of the retirement system upon his or her subsequent employment in a governmental unit. This section states in pertinent part that, "Any person... who enters or re-enters the service as an employee of the commonwealth, a teacher as defined in section one, or an employee of any political subdivision of the commonwealth for which a system established under the provisions of such sections, or under corresponding provisions of earlier laws, is in operation on the date when he becomes an employee,... shall become a member in service upon his entry into service." He or she will be entitled to all rights in effect as of his or her most recent date of membership, including but not limited to the contribution rate.

* Please note that any member who withdraws his money from a system but later rejoins a system (could be the same system or a different system) by repaying money as provided for earlier, is not eligible to receive a Superannuation retirement allowance, an Ordinary Disability retirement allowance or a Termination retirement allowance unless and until he or she shall have been in active service for at least two consecutive years, including any period or periods of leave of absence credited as membership service, subsequent to the date that his or her new employment commenced. *

Retired Members

Retired Member Repays Retirement Benefits to Re-establish Membership (Section 105):

A member retired from a Chapter 32 retirement system. Later, he or she returns to employment in a public entity. M.G.L. c. 32, §105 allows the retiree to pay back all retirement benefits together with actuarial assumed interest (at the actuarial assumed interest rate of the system from which the retiree retired).

For example, assume a member retired on January 1, 2002 with an annual benefit of \$45,000. In January 2007, he or she is hired by the State (State Retirement System). To re-establish membership he or she would repay to the system from which he or she retired all retirement benefits received together with actuarial assumed interest. If we assume the actuarial assumed interest rate of the system from which he or she retired is 8.25%, he or she would owe approximately \$278,000 (\$225,000 in benefits + \$53,000 in interest).

The employee must return to work and membership for 5 years before he or she is eligible to receive an increased retirement benefit under this provision.

If the employee does not complete 5 years of "reinstatement service", he or she would receive a refund of the money paid to the retirement system (without additional interest). Also, if the employee did a make-up or buyback payment after being reinstated, he or she would not receive any credited service for any of the make-ups or buybacks paid after reinstatement to service.

They would, however, receive the money used to do the make-up and/or buyback back without additional interest.

Retired Member Can Waive Receipt of Retirement Allowance:

A retired member who returns to public employment can waive the receipt of his or her retirement allowance and again work for a public entity.

There is no limit as to how many hours he or she can work per year or how much pay he or she can receive from the new position so long as the allowance is being waived. He or she will not be a member of the retirement system pertaining to the new position nor can he or she receive any additional Chapter 32 retirement benefits for this period of time.

As part of his or her new employment, he or she would be required to participate in an alternate retirement program (an OBRA plan), unless he or she returned to employment in the same system from which he or she retired. In this case, he or she would be considered a "returning annuitant" and would not be required to participate in an OBRA plan.

Retired Member Chooses not to Waive Receipt of Retirement Allowance:

A retired member who returns to public employment can decide not to waive the receipt of his or her retirement allowance while working for a public entity.

If he or she chooses not to waive receipt of his or her retirement allowance and is working in the public sector in Massachusetts, he or she can work a maximum of 960 hours per year and the pay that he or she receives from the new position is limited to the difference between the current salary of the position he or she retired from and his or her retirement allowance.

Retired Member Elected to Office or Directly Appointed:

Any retired member of a retirement system upon election to office by popular vote or direct appointment to a position for a term of years by the governor, or appointment to any position by the mayor, city council, selectmen or a sheriff may elect to become a member-in-service of the retirement system pertaining to the position to which they are elected or appointed provided that he or she repays into the system from which he or she retired the total amount of retirement benefits received from that system (without interest) from his or her date of retirement through the date of his or her again becoming a member-in-service.

If a member previously retired for Superannuation is elected to office, that member can work without limitation even if they choose not to rejoin the retirement system. However, if a member previously retired under disability is elected and chooses not to join the retirement system, he or she would be subject to the limits provided for in G.L. c. 32, §91A.

Disability Retiree Returning to Service (Section 8):

In some instances, a member retired under a disability (accidental or ordinary) is later found to be able to perform the essential duties of the position from which he or she was retired. If the retired member is found able to perform the essential duties of the position within two years of the date of the disability retirement, he or she is to be restored to the position that he or she retired from. If the retired member is found able to perform the essential duties after two years from the date of the disability retirement, he or she should be restored to the position, if vacant, or put on a waiting list for the next available position to become available. If a retired member is restored to service, upon his or her subsequent retirement, he or she would receive creditable service for the period of time for which he or she was retired on a disability. No additional contributions or payments are necessary to be restored to service and/or receive such creditable service.

We trust the foregoing is of assistance. If you have any questions concerning this matter, do not hesitate to contact this office.

[Return to PERAC Home Page](#)

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

DOMENIC J. F. RUSSO, *Chairman* | A. JOSEPH DeNUCCI, *Vice Chairman*
 MARY ANN BRADLEY | PAUL V. DOANE | KENNETH J. DONNELLY | JAMES M. MACHADO | DONALD R. MARQUIS

JOSEPH E. CONNARTON, *Executive Director*

May 22, 2008

Kelly Byrne
 Director
 Newton Retirement Board
 1000 Commonwealth Avenue
 Newton Centre, MA 02459-1449



Dear Ms. Byrne:

This letter is in regards to questions you had regarding PERAC Memo #19/2008. Specifically you had questions about the passage dealing with members who re-deposited money to the system and the application of the so-called "two year rule" in G.L. c. 32, §3(6)(e).

Our understanding is that you have a member who had 18 years of service when he terminated his service and withdrew his funds. In 2003, the member returned to service and worked for approximately six weeks. During this six-week period, the member had re-deposited the funds he had withdrawn, together with regular interest, into the system. He stopped working after the six weeks believing he was eligible to retire at some point in the future.

Chapter 32, section 3(6)(e) states:

Anything in sections one to twenty-eight inclusive to the contrary notwithstanding, no person who becomes a member under subdivision (3) of this section, and no member who is reinstated to or who re-enters active service as provided for in paragraph (b), (c) or (d) of this subdivision, or who transfers or re-establishes his membership as provided for in subdivision (8) of this section, shall be eligible to receive a superannuation retirement allowance, an ordinary disability retirement allowance or a termination retirement allowance unless and until he shall have been in active service for at least two consecutive years, including any period or periods of leave of absence credited as membership service, subsequent to the date of commencement of his new employment, or unless, in the case of any member who is reinstated to or who re-enters active service as provided for in paragraph (b) of this subdivision or who transfers his membership as provided for in paragraph (8) (a) of this section, he was eligible to receive a retirement allowance under the provisions of section ten at the time of his last separation from service; provided that, in the case of a member whose account is transferred under said paragraph (8) (a), this paragraph shall not apply



Kelly Byrne
May 27, 2008
Page Two

after the member has rendered service or attained an age so that he would have been eligible to retire if he had continued to be a member of the retirement system from which his account was transferred.

We will now dissect this section to see how it applies to the member in question.

You had indicated that the member in question had taken a refund of his contributions and subsequently repaid the contributions upon returning to service in the Newton Retirement System. Sections 3(6)(c) and 3(6)(d) deal with re-establishing membership after retirement deductions have been withdrawn from the system (depending on whether the member returns within two years or after two years). Since one of these sections would apply to your member (it is not known by the Commission if the member returned within two years of withdrawing his funds or not), he must have two years of service subsequent to commencement of his new employment in order to be eligible for a Superannuation, Ordinary Disability or Termination benefit.

Section 3(6)(e) then goes on to list some provisos that would allow a member to circumvent the two-year requirement. These are "...in the case of any member who is reinstated to or who re-enters active service as provided for in paragraph (b) of this subdivision [§3(6)]..." or "...who transfers his membership as provided for in paragraph (8) (a) of this section [§3], he was eligible to receive a retirement allowance under the provisions of section ten at the time of his last separation from service..." Section 3(6)(b) deals with inactive members whose membership has been retained by failing to withdraw their total accumulated deductions. Section 3(8)(a) deals with members who transfer membership from one system to another by transferring their total accumulated deductions. Since he had withdrawn his funds from the system, neither of these sections would apply to your member. Therefore, the so-called "two-year rule" would apply.

It is our understanding that the Newton Retirement Board used information from page 21 of Massachusetts Public Employee Retirement Guide (Revised 6,2000) in determining whether the member in question was eligible to retire. This guide, in a question/answer format, contains the following:

Q: What creditable service requirements pertain to the transfer or re-establishment of membership and retirement benefit eligibility?

A: No member who is reinstated or re-enters or who transfers or re-establishes his membership is eligible to receive a superannuation, ordinary disability, or termination retirement allowance until the member has been in active service for at least two consecutive years following the start of the new employment. This two-year requirement will not apply if the member was eligible to receive a termination retirement allowance or had 10 years of creditable service prior to the

Kelly Byrne
May 27, 2008
Page Three

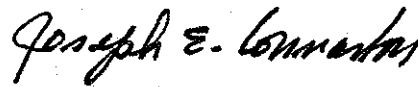
last separation from public service. In the few systems that have not adopted the 10-year ordinary disability provision, the member must have 15 years of creditable service.

Admittedly, the above answer is ambiguous. The last two sentences of the answer passage are referring to eligibility for an ordinary disability benefit (and not a superannuation benefit) as suggested by the fact that the final sentence talks about the ten-year ordinary disability local option. This ambiguity has been cleared up in the most recent Massachusetts Public Employee Retirement Guide (Revised 2.2006).

Unfortunately, unless new information is provided, your member will not be eligible to receive a superannuation, ordinary disability or termination retirement benefit until he has two consecutive years of creditable service.

We trust the foregoing is of assistance and we apologize for any inconvenience that has been caused. If you have any further questions, do not hesitate to contact this office.

Sincerely,



Joseph E. Connarton
Executive Director

JEC/sfc

p:\clcultns\misc\newton36eissue.doc

Massachusetts Public Employee Retirement Guide

REVISED 6/2000

Public Employee Retirement Administration Commission
Commonwealth of Massachusetts



Creditable Service

Q *How is creditable service earned?*

A In general, you earn creditable service toward your retirement allowance for the period during which you contribute either 5%, 7%, 8%, 9%, 11%, or 12% of your salary to the retirement system.

Q *May I buy back creditable service?*

A If you terminate your public service and take a refund of your accumulated total deductions and later return to public service, you may re-establish your prior creditable service by buying it back. But, you will begin as a new member, making contributions at the current rate.

Seasonal Employment

Q *How is creditable service calculated for seasonal employees?*

A Employees whose work is found by their retirement board to be seasonal in nature and who work full-time for at least seven months are entitled to one year of creditable service. Retirement boards will, on a board by board basis, determine how much full-time seasonal service will constitute the equivalent of one year of service for those who work less than seven months a year.

Two-Year Creditable Service Requirement

Q *What creditable service requirements pertain to the transfer or re-establishment of membership and retirement benefit eligibility?*

A No member who is reinstated or re-enters or who transfers or re-establishes his membership is eligible to receive a superannuation, ordinary disability, or termination retirement allowance until the member has been in active

service for at least two consecutive years following the start of the new employment. This two-year requirement will not apply if the member was eligible to receive a termination retirement allowance or had 10 years of creditable service prior to the last separation from public service. In the few systems that have not adopted the 10-year ordinary disability provision, the member must have 15 years of creditable service.

Q *Is the two-year requirement waived when a transfer involves no break in service?*

A This requirement will not apply once the member has become eligible to retire from the retirement system from which his/her account was transferred by virtue of attaining an age or earning sufficient creditable service.

Workers' Compensation Benefits

Q *How is my creditable service affected by an absence caused by a work-related injury or hazard?*

A Full creditable service will be awarded to any member-in-service for a period of absence that is attributable to an injury sustained or a hazard undergone during employment that results in total incapacitation and for which Workers' Compensation benefits are paid. The member receives the creditable service without having to make contributions to the retirement system. Workers' Compensation benefits received during such a period are not considered to be regular compensation and cannot be used to calculate a retirement allowance.



David B. Cohen
Mayor

City of Newton, Massachusetts
Office of the Mayor

#29-09
Telephone
(617) 796-1100
Telefax
(617) 796-1113
TDD
(617) 796-1089
E-mail
dcohen@newtonma.gov

January 13, 2009

09 JAN 13 PM 4:23
CITY CLERK
NEWTON, MA. 02159

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

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate and expend three hundred fifty-eight thousand five hundred forty-four dollars (\$358,544) from Free Cash for the purpose supplementing the snow and ice budget in the Parks and Recreation Department to be broken down as follows:

	Snow Emergencies	Tree Emergencies	TOTAL
Overtime	\$32,760	\$2,811	\$35,571
Equipment Rental	\$305,364	\$17,609	\$322,973
TOTAL	\$338,124	\$20,420	\$358,544

Thank you for your consideration of this matter.

Very truly yours,

David B. Cohen
Mayor

DBC: srb

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.ci.newton.ma.us



DEDICATED TO COMMUNITY EXCELLENCE

NEWTON PARKS AND RECREATION DEPARTMENT

#29-09



DAVID B. COHEN
MAYOR

70 Crescent Street, Newton, MA 02466
Office: 617 796-1500
Fax: 617 796-1512
TTY: 617 796-1089



1/13/2009

Honorable Mayor David B. Cohen
Newton City Hall
1000 Commonwealth Avenue
Newton, Mass. 02459

Dear Mayor Cohen:

09 JAN 13 PM 4:23
 CITY CLERK
 NEWTON, MA 02159

I am respectfully requesting an appropriation of \$ 358,544.00 to cover the costs incurred for tree and snow emergencies from 7/1/2008 to 1/12/2009

Snow Emergency costs – actual and pending invoices from 07/01/2008 to date:

Equipment Rental	\$ 305,364.00	Requesting	\$ 305,364.00
Department Overtime	\$ 32,760.21	Requesting	\$ 32,760.00
Other Department O.T.	\$ -	Requesting	\$ -

Tree Emergency costs – actual and pending invoices from 08/25/2008 to date:

Equipment Rental	\$ 23,608.50	Requesting	\$ 17,609.00
Department Overtime	\$ 2,811.34	Requesting	\$ 2,811.00
Other Department O.T.	\$ -	Requesting	\$ -

Grand Total: \$ 358,544.00

COMMISSION
MEMBERS

WARD 1 - PAUL CAMILLI
WARD 2 - ARTHUR MAGNI
WARD 3 - PETER JOHNSON

WARD 4 - FRANCIS J. RICE, CHAIRMAN
WARD 5 - WALTER S. BERNHEIMER II, VICE CHAIRMAN
WARD 6 - LEE MOTTARD

WARD 7 - VACANT
WARD 8 - KATHLEEN A. HEITMAN
COMM. SECRETARY - VACANT

ALTERNATES: MICHAEL CLARKE, PETER KASTNER, JACK NEVILLE

www.ci.newton.ma.us/parks

In the above request, equipment rental for snow emergencies the contractors have been Marini Corp., Reliable Roofing, Newton Roofing, and Jewett Landscaping and tree emergencies has been primarily D&B Tree Service. All these contractors were procured on a bid process. Department overtime includes Department Supervisory staff and in-house crews. In some instances Other City Departments have augmented in-house crews.

A snow emergency includes one or more of the following costs: 1) contractors removing snow from School sites, Newton City Hall and Main Library; 2) in-house crews removing snow from 13 Recreation Department buildings, 4 neighborhood libraries, Newton Health Department facility, Jackson Home, Newton Senior Center, Brigham House, Newton Police Headquarters and Annex; 3) in-house crew sanding and salting Schools, Public Buildings and supplementing Public Works with drivers and trucks as requested.

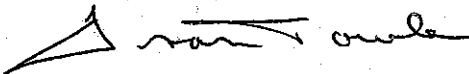
99 JAN 13 PM 4: 23
CITY CLERK
NEWTON, MASS 02459

A tree emergency maybe a single instance of a tree being damaged by an accident, or a weather related emergency requiring one, two or more crews to respond for cleanup. These expenses have occurred since July 1, 2008.

This request covers the needed funds to cover Snow Emergency expenditures from July 1, 2008 to date and leaves \$181,400.00 for Snow Emergency Equipment Rental and \$40,402.00 for Snow Emergency Department O.T.

This request will also cover the actual Forestry Emergency Equipment Rental expenditures from August 25, 2008 and leaves \$29,060.00 for Forestry Emergency Equipment Rental and \$9,561.00 for Forestry Emergency Department O.T.

Sincerely,



Fran L. Towle
Parks & Recreation Commissioner

FLT/rjd
att:

01602012 5273	\$	305,364.00	Snow/Equipment Rental
01602012 513001	\$	32,760.00	Snow/Department Overtime
01602011 5273	\$	17,609.00	Tree/Equipment Rental
01602011 513001	\$	2,811.00	Tree/Department Overtime
	\$	358,544.00	TOTAL APPROPRIATION REQUEST

Parks and Recreation Department
Snow and Ice Emergencies
1/13/2009

Contractor	Date	Snow Depth	Sch. A	Sch. B-1	Sch. B-2	Sch. C	Sch. D	Haul. Op.	Totals	Trees	Maint.	St. Tils.
Reliable Roofing	12/17/2008	0-2"					\$4,000.00		\$ 4,000.00			
Newt. Roofing	12/17/2008								\$ -			
Jewett	12/17/2008								\$ -			
Marini	12/17/2008								\$ -			
K & D	12/17/2008								\$ -			
TOTALS:			\$ -	\$ -	\$ -	\$ -	\$ 4,000.00	\$ -	\$ 4,000.00		\$ 2,572.91	\$ 6,572.91

Contractor	Date	Snow Depth	Sch. A	Sch. B-1	Sch. B-2	Sch. C	Sch. D	Haul. Op.	Totals	Trees	Maint.	St. Tils.
Reliable Roofing	12/19/08	11"	\$15,000.00				\$10,000.00	\$ 544.00	\$ 25,544.00			
Newt. Roofing	12/19/08	11"		\$13,823.00				\$1,959.00	\$ 15,782.00			
Jewett	12/19/08	11"			\$11,000.00				\$ 11,000.00			
Marini	12/19/08	11"				\$30,000.00			\$ 30,000.00			
K & D	12/19/08	11"						\$ 1,260.00	\$ 1,260.00			
TOTALS:			\$ 15,000.00	\$ 13,823.00	\$ 11,000.00	\$ 30,000.00	\$ 10,000.00	\$ 3,763.00	\$ 83,586.00		\$ 8,154.14	\$ 91,740.14

Contractor	Date	Snow Depth	Sch. A	Sch. B-1	Sch. B-2	Sch. C	Sch. D	Haul. Op.	Totals	Trees	Maint.	St. Tils.
Reliable Roofing	12/21/08	5"	\$10,000.00				\$7,000.00	\$ 1,088.00	\$ 18,088.00			
Newt. Roofing	12/21/08	5"		\$8,489.00				\$2,320.50	\$ 10,809.50			
Jewett	12/21/08	5"			\$9,150.00				\$ 9,150.00			
Marini	12/21/08	5"				\$23,000.00			\$ 23,000.00			
K & D	12/21/08	5"						\$ 1,260.00	\$ 1,260.00			
TOTALS:			\$ 10,000.00	\$ 8,489.00	\$ 9,150.00	\$ 23,000.00	\$ 7,000.00	\$ 4,668.50	\$ 62,307.50		\$ 8,154.13	\$ 70,461.63

Contractor	Date	Snow Depth	Sch. A	Sch. B-1	Sch. B-2	Sch. C	Sch. D	Haul. Op.	Totals	Trees	Maint.	St. Tils.
Reliable Roofing	12/31/2008	6.5"	\$10,000.00				\$7,000.00	\$ 544.00	\$ 17,544.00			
Newt. Roofing	12/31/2008	6.5"		\$8,489.00				\$ 1,678.00	\$ 10,167.00			
Jewett	12/31/2008	6.5"			\$9,150.00			\$ 510.00	\$ 9,660.00			
Marini	12/31/2008	6.5"				\$23,000.00		\$ 204.00	\$ 23,204.00			
K & D	12/31/2008	6.5"							\$ -			
TOTALS:			\$ 10,000.00	\$ 8,489.00	\$ 9,150.00	\$ 23,000.00	\$ 7,000.00	\$ 2,936.00	\$ 60,575.00		\$ 5,752.56	\$ 66,327.56

Contractor	Date	Snow Depth	Sch. A	Sch. B-1	Sch. B-2	Sch. C	Sch. D	Haul. Op.	Totals	Trees	Maint.	St. Tils.
Reliable Roofing	1/5/2009	Sanding	\$2,000.00				\$2,000.00		\$ 4,000.00			
Newt. Roofing	1/5/2009	Sanding		\$880.00					\$ 880.00			
Jewett	1/5/2009	Sanding			\$1,800.00				\$ 1,800.00			
Marini	1/5/2009	Sanding				\$1,800.00			\$ 1,800.00			
K & D	1/5/2009	Sanding							\$ -			
TOTALS:			\$ 2,000.00	\$ 880.00	\$ 1,800.00	\$ 1,800.00	\$ 2,000.00	\$ -	\$ 8,480.00			\$ 8,480.00

09 JAN 13 PM 4:23
 CITY CLERK
 NEWTON, MA 02459

Parks and Recreation Department
Snow and Ice Emergencies
1/13/2009

Contractor	Date	Snow Depth	Sch. A	Sch. B-1	Sch. B-2	Sch. C	Sch. D	Haul. Op.	Totals	Trees	Maint.	St. Tils.
Reliable Roofing	1/7/2009	0-2"	\$6,000.00				\$4,000.00	\$ 544.00	\$ 10,544.00			
Newt. Roofing	1/7/2009	0-2"		\$3,698.00					\$ 3,698.00			
Jewett	1/7/2009	0-2"			\$5,250.00				\$ 5,250.00			
Marini	1/7/2009	0-2"				\$6,000.00			\$ 6,000.00			
K & D	1/7/2009	0-2"							\$ -			
TOTALS:			\$ 6,000.00	\$ 3,698.00	\$ 5,250.00	\$ 6,000.00	\$ 4,000.00	\$ 544.00	\$ 25,492.00		\$2,226.35	\$ 27,718.35

Contractor	Date	Snow Depth	Sch. A	Sch. B-1	Sch. B-2	Sch. C	Sch. D	Haul. Op.	Totals	Trees	Maint.	St. Tils.
Reliable Roofing	1/11/2009	5"	\$10,000.00				\$7,000.00	\$ 544.00	\$ 17,544.00			
Newt. Roofing	1/11/2009	5"		\$8,489.00				\$1,732.50	\$ 10,221.50			
Jewett	1/11/2009	5"			\$9,150.00				\$ 9,150.00			
Marini	1/11/2009	5"				\$23,000.00			\$ 23,000.00			
K & D	1/11/2009	5"						\$ 1,008.00	\$ 1,008.00			
TOTALS:			\$ 10,000.00	\$ 8,489.00	\$ 9,150.00	\$ 23,000.00	\$ 7,000.00	\$ 3,284.50	\$ 60,923.50		\$5,900.12	\$ 66,823.62

Equipment Rental	Dept. O.T.	Total:
\$ 305,364.00	\$ 32,760.21	\$ 338,124.21

CITY CLERK
 NEWTON, MA 02459
 09 JAN 13 PM 4:23

Trees Emergency

1/13/2009

Date	Time in	Time out	Hours	Equipment	Crew	Rate	Cost	Issue
Monday, August 25, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	Strong winds/ T. Storm
Wednesday, September 03, 2008	15:30	18:30	3.00	PBC Bucket	2 per.	\$ 110.00	\$ 330.00	Large hangers, Lyons & Spaulding
Sunday, September 07, 2008	9:00	15:30	6.50	PBC Bucket	2 per.	\$ 110.00	\$ 715.00	Strong winds trees and limbs down
	9:00	15:30	6.50	Supp. Crew n	1 per.	\$ 60.00	\$ 390.00	Strong winds trees and limbs down
Tuesday, September 09, 2008	13:00	15:00	2.00	Supp. Crew n	2 per.	\$ 100.00	\$ 200.00	29 Clinton St. Tree Down
Sunday, September 14, 2008	12:00	15:00	3.00	PBC Bucket	1 per.	\$ 110.00	\$ 330.00	Strong winds trees and limbs down
	12:00	15:00	3.00	Log Loader	1 per.	\$ 75.00	\$ 225.00	Strong winds trees and limbs down
Monday, September 15, 2008	11:00	13:00	2.00	PBC Bucket	2 per.	\$ 100.00	\$ 200.00	Myrtle St. & Pine Ridge tree down
Friday, September 26, 2008	11:00	15:00	4.00	Chip Truck	1 per.	\$ 95.00	\$ 380.00	Strong winds trees and limbs down
	8:00	15:00	7.00	Log Loader	1 per.	\$ 75.00	\$ 525.00	Strong winds trees and limbs down
Saturday, September 27, 2008	10:00	13:00	3.00	Chip Truck	1 per.	\$ 95.00	\$ 285.00	187 Varick Rd. tree down
	10:00	13:00	3.00	Log Loader	1 per.	\$ 75.00	\$ 225.00	187 Varick Rd. tree down
Wednesday, October 15, 2008	10:00	12:00	2.00	PBC Bucket	2 per.	\$ 100.00	\$ 200.00	75 Wayne Rd. tree down
Wednesday, October 22, 2008	13:00	15:00	2.00	PBC Bucket	2 per.	\$ 100.00	\$ 200.00	130 Garland Rd. sever hanger
Sunday, October 26, 2008	12:00	18:30	6.50	PBC Bucket	2 per.	\$ 110.00	\$ 715.00	Strong winds trees & limbs down
Monday, October 27, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	strong wind clean up
Tuesday, October 28, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	strong wind clean up
Tuesday, October 28, 2008	15:30	18:30	3.00	PBC Bucket	2 per.	\$ 110.00	\$ 330.00	strong wind limb & hangers blocking
Wednesday, October 29, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	strong wind clean up
Thursday, October 30, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	strong wind clean up
Monday, October 27, 2008	7:30	15:00	7.50	Grinding crew	2 per.	\$ 124.00	\$ 930.00	Stump and Debris removal from storms
Tuesday, October 28, 2008	8:30	15:00	6.50	Grinding crew	2 per.	\$ 124.00	\$ 806.00	Stump and Debris removal from storms
Wednesday, October 29, 2008	7:00	15:15	8.25	Grinding crew	2 per.	\$ 124.00	\$ 1,023.00	Stump and Debris removal from storms
Thursday, October 30, 2008	7:00	15:00	8.00	Grinding crew	2 per.	\$ 124.00	\$ 992.00	Stump and Debris removal from storms
Friday, October 31, 2008	7:00	15:15	8.25	Grinding crew	2 per.	\$ 124.00	\$ 1,023.00	Stump and Debris removal from storms
Monday, November 03, 2008				Wood chip removal		\$ 800.00		woodchip removal at Rumford
Monday, November 17, 2008	15:30	19:00	3.50	PBC Bucket	2 per.	\$ 110.00	\$ 385.00	Limbs and hangers

09 JAN 13 PM 4: 23

CITY CLERK
NEWTON, MA. 02159

Wednesday, November 19, 2008	15:30	19:00	3.50	PBC Bucket	2 per.	\$ 110.00	\$ 365.00	Limbs and hangers
Thursday, November 20, 2008	15:30	18:30	3.00	PBC Bucket	2 per.	\$ 110.00	\$ 330.00	Limbs and hangers
Friday, November 21, 2008	15:30	18:30	3.00	PBC Bucket	2 per.	\$ 110.00	\$ 330.00	Limbs and hangers
Wednesday, December 10, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	Limbs and hangers
Wednesday, December 10, 2008	15:30	16:15	0.75	PBC Bucket	2 per.	\$ 110.00	\$ 82.50	Several limbs blocking
Thursday, December 11, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	Limbs and hangers
Friday, December 12, 2008	18:00	20:00	3.00	Supp. Crew	1 per.	\$ 65.00	\$ 195.00	Dunklee Rd tree down
Monday, December 15, 2008	15:30	16:30	1.00	PBC Bucket	1 per.	\$ 110.00	\$ 110.00	Lowell Ave. uprooted tree
Thursday, December 18, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	Limbs and hangers
Friday, December 19, 2008	7:00	12:30	6.50	Grinding crew	1 per.	\$ 154.00	\$ 847.00	Debris and stump removal
Monday, December 22, 2008	7:00	12:00	5.00	PBC Bucket	2 per.	\$ 100.00	\$ 500.00	Strong winds, limbs, trees & hangers
Friday, December 26, 2008	7:00	15:30	8.50	PBC Bucket	2 per.	\$ 100.00	\$ 850.00	Strong winds, limbs, trees & hangers
Monday, December 29, 2008	7:00	15:00	8.00	Supp. Crew	1 per.	\$ 55.00	\$ 440.00	Strong winds, limbs, trees & hangers
Tuesday, December 30, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	Strong winds, limbs, trees & hangers
Wednesday, December 31, 2008	7:00	15:00	8.00	PBC Bucket	2 per.	\$ 100.00	\$ 800.00	Strong winds, limbs, trees & hangers
Friday, January 09, 2009	7:00	13:00	6.00	Supp. Crew	1 per.	\$ 55.00	\$ 330.00	limbs down due to weather

Total Storm Cost \$ 23,608.50

09 JAN 13 PM 4:23

CITY CLERK
NEWTON, MA. 02159



David B. Cohen
Mayor

City of Newton, Massachusetts
Office of the Mayor

#30-09

Telephone
(617) 796-1100

Telefax
(617) 796-1113

TDD
(617) 796-1089

E-mail
dcohen@newtonma.gov

January 13, 2009

09 JAN 13 PM 4: 22
CITY CLERK
NEWTON, MA, 02159

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

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to appropriate twenty five thousand dollars (\$55,000) from Marathon Receipts for the purpose of funding park improvements and repairs.

This appropriation will be used as seed funding for the installation of playground equipment at the Burr School and Solomon Schechter Playground (\$25,000) and to replace Fibar ground covering and broken or otherwise unsafe playground equipment (\$30,000).

Thank you for your consideration of this matter.

Very truly yours,

David B. Cohen
Mayor

DBC: srb

1000 Commonwealth Avenue Newton, Massachusetts 02459

www.ci.newton.ma.us



DEDICATED TO COMMUNITY EXCELLENCE



DAVID B. COHEN
MAYOR

NEWTON PARKS AND RECREATION DEPARTMENT

#29-09

70 Crescent Street, Newton, MA 02466
Office: 617 796-1500
Fax: 617 796-1512
TTY: 617 796-1089



FRAN L. TOWLE
COMMISSIONER

09 JAN 13 PM 4:22
CITY CLERK
NEWTON, MA 02159

January 13, 2009

Honorable David B. Cohen, Mayor
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Dear Mayor Cohen:

I am writing to respectfully request that you docket with the Honorable Board of Aldermen for consideration a request to appropriate and expend \$55,000 from Marathon receipts.

Of the total appropriation, \$30,000 will be used for the purpose of purchasing replacement Fibar, a material that provides a safe surface under existing play structures on which children can play and for making additional purchases of playground equipment and miscellaneous hardware to replace worn, defective or unsafe playground equipment and parts, as identified by the Parks & Recreation Department.

The remaining \$25,000 of the appropriation will be utilized to purchase playground equipment at Burr School and Solomon Schechter Playground, with each site receiving an appropriation of \$12,500. As has been the case with appropriations of Marathon funds in the past, these funds will be used as seed money and will be combined with future fundraising from local community groups to enhance the playgrounds.

Thank you for your consideration in this matter.

Sincerely,

Fran Towle
Commissioner

cc: Sandy Pooler, Chief Administrative Officer
Susan Burstein, Chief Budget Officer

Att:

COMMISSION
MEMBERS

WARD 1 - PALL CAMILLI
WARD 2 - ARTHUR MAGNI
WARD 3 - PETER JOHNSON

WARD 4 - FRANCIS J. RICE, CHAIRMAN
WARD 5 - WALTER S. BERNHEIMER II, VICE CHAIRMAN
WARD 6 - LEE MOTTARD

WARD 7 - VACANT
WARD 8 - KATHLEEN A. HEITMAN
COMM. SECRETARY - VACANT

ALTERNATES: MICHAEL CLARKE, PETER KASTNER, JACK NEVILLE

www.ci.newton.ma.us/parks

**Newton Parks and Recreation Department
Non School playground Areas
Recommended Order of Priority for Seed Money
Beginning FY04**

September 2003

1. Upper Falls
2. Newton Centre
3. Cabot Park
4. Charlesbank
5. Hunnewell
6. Carr
7. Newton Highlands
8. Solomon Schechter Memorial
9. West Newton Common
10. Lower Falls
11. Crescent Street
12. Emerson
13. Hyde
14. Auburndale
15. Torchia/Davis
16. River Street
17. Richardson
18. Wellington
19. Stearns
20. Pellegrini
21. Forte
22. Burr Park
23. Weeks
24. Warren Lincoln

09 JAN 13 PM 4:22
CITY CLERK
NEWTON, MA 02159

The above priorities are subject to change due to unforeseen circumstances. For consideration seed monies will be divided in half, each fiscal year. Half going to a non-school playground and the other to a school attached playground.

**Newton School Department
Newton Parks and Recreation Department
School Playground Areas
Recommended Order of Priority for Seed Money
Beginning FY06**

September 2003

1. Bowen Elementary
2. Lincoln Eliot Elementary
3. Angier Elementary
4. Franklin Elementary
5. Burr Elementary
6. Underwood Elementary
7. Williams Elementary
8. Mason Rice Elementary
9. Ward Elementary
10. Countryside Elementary
11. Peirce Elementary
12. Zervas Elementary
13. Cabot Elementary
14. Education Center
15. Memorial Spaulding Elementary
16. Horace Mann Elementary

The above priorities are subject to change due to unforeseen circumstances. For consideration seed monies will be divided in half, each fiscal year. Half going to a school attached playground and the other to a non-school attached playground.

09 JAN 13 PM 4:22
CITY CLERK
NEWTON, MA 02459

09 JAN 13 PM 4:22
CITY CLERK
NEWTON, MA 02459

REFERRED TO PROG. & SERV., PUB. FAC., AND LAND USE COMMITTEES

#329-08 ALD. JOHNSON, ALBRIGHT & LINSKY requesting amendment to §20-13, *Noise Ordinance*, of the City of Newton Ordinances to prohibit the City from exceeding the parameters of time and decibel restrictions unless it receives approval from the Land Use Committee of the Board of Aldermen. [09-02-08 @ 12:00 PM]

PROGRAMS & SERVICES HELD 8-0 on 10/15/08

ACTION: **HELD 7-0**

NOTE: The Programs and Services Committee joined the Committee for discussion of this item. Ald. Johnson provided the Committees with some background on the docket item. Ald. Johnson, Albright and Linsky receive numerous calls regarding the noise generated due to the construction of the new Newton North High School. Currently, the noise ordinance gives the Mayor the authority to grant a permit for the waiver of the ordinance's time restrictions. There have been issues regarding waivers that have been granted to Dimeo Construction for construction of the new high school.

Ald. Johnson pointed out that the section of the noise ordinance giving the Mayor the authority to grant waivers also states that appropriate procedures for processing the requests must be established. There are no procedures currently in place. The Board of Aldermen is not informed about the waivers until after they are granted.

Ald. Johnson would like Ald. Linsky, Albright and herself to work with the administration to establish procedures. She asked that the item be held in the Committees in case they cannot reach consensus regarding the procedures.

Ald. Albright feels that part of the problem is that the neighbors do not know what to expect on any given day in terms of construction. If they knew what to expect in the short-term and long-term, they would be a happier group of people. She understands that at the last neighborhood liaison meeting the Commissioner provided a projection of noise over a period of time that was to be posted on the web site. The Commissioner stated that the document was posted to the web site in the past few days.

Ald. Gentile pointed out that notification regarding noise has improved recently. Dimeo Construction has prohibited the use of machinery with a back-up sensor that beeps after 7 PM. Dimeo has also reduced the size of the concrete pours to have the concrete cured earlier in the day. They are limiting the time of day in which the concrete can be delivered, because the sooner it is poured the more time it has to cure.

Ald. Brandel stated that the Newton North High School project is not the only public construction that has taken place in the City. There have been other problems with construction taking place after hours. The MBTA often does repairs at night and does not inform the neighbors. He would like to see a process that includes a requirement of at least a 48-hour notification that there is a permit being granted for a noise ordinance waiver. Most people are willing to go along with the waiver as long as they know about it in advance. Ald. Gentile would like to see a mailing to the neighbors of a brief weekly

construction report. It will provide the neighborhood with a sense of what will be going on with the project.

Ald. Yates moved hold in the Public Facilities Committee, which carried unanimously and Ald. Merrill moved hold in Programs and Services Committee, which carried unanimously.

#329-05(2) ALD. PARKER & JOHNSON requesting further amendment to the noise ordinance to: improve enforceability and effectiveness of the ordinance; remove the source-based exemption for noise generated by birds, and; address the differential treatment of construction noise on weekends.
[08-26-08 @ 3:15 PM]

ACTION: **HELD 8-0**

NOTE: Ald. Freedman started the meeting as acting Chairman. Ald. Parker explained that there had been much work done on updating the noise ordinance recently. He felt there were a few items that needed further attention. Instead of delaying the passage of the entire ordinance, it was decided that an item would be docketed to address these concerns.

Bird Exemption

Ald. Parker explained that there was an exemption in the current noise ordinance for dogs and birds. He felt it did not matter what the noise source was if there was a disruption of someone's daily life. He noted there was a barking dog ordinance, but there was no restriction on bird generated noise and it posed a significant quality of life issue for those residents who lived next to places where fowl was being kept. This amendment would not say that people could not keep fowl, it would just say that the same restrictions would apply in terms of their noise levels. He believed there were approximately 40 residential locations in the city on which fowl were being kept. It was legal under Massachusetts General Law and he was not suggesting that it shouldn't be, just that there should not be a source based exemption for one type of noise source. Ald. Parker felt there was no public policy justification for exempting one particular noise source. He said he checked with the Law Department and this change would not conflict with any state law or regulation.

Resident Complaints

Ald. Parker said that he had received several complaints from residents about this problem and that Ald. Johnson had as well. A Newton resident, Jane Tardif, testified before the committee in the past and Ald. Parker said some people did not want to come forward as they were concerned about repercussions from their neighbors. He said it was not a widespread issue, but for the population of people that were affected, it was a significant problem.

Mr. Paul Loranger of 67 Brooks Avenue in Newtonville said that his property abutted a residence that kept fowl. His house was about a foot from the property line and the coop was about 20 feet from the property line. He said the chickens were making noise from dawn until dusk. The neighbor had a type of chicken that was very "screech oriented" and the noise was constant. Mr. Loranger said his quality of life has been terrible since the chickens moved next door and he has considered selling his property because it was so bad. He said that he has called the animal control officer out of sheer desperation but was told there nothing could be done. He hoped that something could be done about it because he was exposed to this noise every single day and it was extremely upsetting.

The person he rented to was also extremely disturbed by this. He was unable to work at home due to the noise.

Previous Discussions on Birds

Ald. Baker noted that this had been brought up in the past by Ald. Bauckman. Ald. Parker explained that there had been an attempt to combine this with the barking dog ordinance but they found during their deliberations that there was no point to the barking dog ordinance and it should be eliminated. He said it got too complicated and was dropped. He felt his current proposal was a much simpler solution. Ald. Hess-Mahan said the barking dog ordinance had been enforced.

Remediation

Ald. Freedman asked how chicken owners could remediate any noise problem. Ald. Parker said that the noise ordinance was not easy to enforce but this would at least allow some discussion with the few cases that were involved. On Mr. Loranger's street, for example, the chickens could be moved to the coop on the property that was further away from the neighbor and did not cause disruption.

Ald. Hess-Mahan said that chicken noise can be considerable from his experience. He felt the noise ordinance might not be the best way to remediate the problem and wondered if there could be a better, more practical solution. Ald. Baker agreed. He was surprised that there were chicken coops in the city and wondered why there was some privilege that allowed people to do that. He would like to find out more about this issue. Ald. Parker felt it was a vestige of Newton's agricultural history. He did not want to make this a personal issue. He just felt that there should not be an exemption for any particular noise source. He felt the impact of this change would help the few people being adversely affected by the noise and would not cause any sort of widespread disruption.

Public Meeting

Ald. Hess-Mahan said that Ald. Johnson wanted to hold a public meeting in order to allow residents an opportunity to comment on this. He said he had not been aware of any complaints about this issue but was interested in hearing from people on both sides of this issue. Ald. Parker said that public comment had already been heard at the last round of noise ordinance discussions and felt it was a very simple issue. Ald. Hess-Mahan, Brandel and Baker felt further research and public comment were necessary.

Lawn Care Equipment

Ald. Parker said that recent amendment to the noise ordinance was problematic as the section on lawn care equipment was based on individual pieces of equipment. Each piece of equipment had an allowable dB level (lawnmowers, leaf blowers, etc.). The problem was that if many pieces of equipment were running at the same time, the cumulative effect was higher than the maximum for any particular piece. He said this was a common occurrence when lawn care companies worked on residences. Ald. Parker felt it was an oversight to not include the cumulative total. The noise pollution section did not apply to

lawn care equipment. The lawn care equipment section was an exemption to the noise pollution section and had its own specifications.

Ald. Parker proposed the following amendment:

“The cumulative noise level from multiple pieces of equipment operating simultaneously on the same site shall not exceed the maximum noise levels allowed when measured at the nearest lot line.”

Ald. Freedman thought there needed to be some clarification on what the maximum noise level would be. Ald. Parker said he would have Marie Lawlor re-draft the amendment to clarify that. Ald. Hess-Mahan said he thought this will be a big concern for landscaping companies. Ald. Baker pointed out that this applied only to lawn care equipment and wondered if it would lead to the inclusion of construction equipment as well.

Construction Hours

Ald. Parker reminded the committee that there had been amendment to the section of the noise ordinance that dealt with allowable times for construction noise on weekends which made Saturday and Sunday equal. It was approved in committee but failed on the floor of the Board. The proposal had been to allow construction on both Saturday and Sunday from 11am until 7pm. The two arguments against this were that Sunday had always been the traditional “day off” and that construction companies needed to start early on Saturday to get the work done. He noted that waivers could be granted by the Mayor for either day for work as necessary.

The two aspects of this issue were the enjoyment of quiet during some portion of the weekend and the ability of people to do work on their own homes on the weekend. There were a group of people who lived in the city who could not do work on Saturday for religious reasons and who worked Monday through Friday. This ordinance left them

with no opportunity to do work on their own homes on the only day left available to them. He said he has heard from many people about this issue and that people were afraid of backlash for raising this publicly. He wanted to speak for them. He also noted that the waiver process would not be appropriate for their needs. For example, if a person wanted to work on their shed on a Sunday, going to the Mayor for a waiver would be an undue burden.

Proposed Amendments

Ald. Parker proposed, as an alternative, negotiations with neighbors and abutters to choose the day they prefer construction to take place. He also proposed making Saturday and Sunday exactly the same in the ordinance and he felt this would remove the discrimination. Commercial construction on Sunday would still be prohibited by state law, but private homeowners would be able to do work on their homes. This would insure that big, noisy construction projects would not be occurring on Sundays. He felt this was the simplest solution. He would like to make the morning start time one hour later than the current start time and have the same hours apply to both days.

Ald. Hess-Mahan pointed out the prohibited behavior as currently stated in the noise ordinance for Sunday. This included hand power tools and hand tools that made noise. He felt this was unduly restrictive and this issue deserved review. Ald. Brandel agreed. He said people were doing work on their homes on Sunday and as long as they were using common sense and not being unduly disruptive, he did not see anything wrong with that. He felt that would be a good place to start. Ald. Baker said that he wouldn't work on the scope of the ordinance and felt it was the best version he had seen.

Follow up

Ald. Johnson asked Ald. Parker to share his research on how other communities deal with this issue. Ald. Brandel felt Ald. Parker should limit his research to communities within Massachusetts because of the restrictions of the Blue Laws, and to communities with similar population density. Ald. Johnson would like to have a public meeting on this issue. She would also like some conversations to take place beforehand with construction companies in Newton to see if some common ground could be found. Ald. Parker recognized that there were competing interests in this issue and hoped to find some creative solutions that addressed them. Ald. Parker moved to hold this item and the committee voted in favor.

#422-06 ALD. HESS-MAHAN requesting creation of an ordinance prohibiting the use of portable gasoline-powered leaf blowers within the City limits.

APPROVED AS AMENDED 4-2-2 (Brandel, Sangiolo opposed; Baker, Merrill abstaining) on 3/19/08

RECOMMITTED TO PROGRAMS & SERVICES ON 4-22-08

ACTION: HELD 6-0

NOTE: Ald. Hess-Mahan explained said the Committee received feedback from the public meetings and learned that most of the proposed ordinance was non-controversial; blowing debris into the street, on other's lawns, or into open doors or windows. The main issue of contention was the seasonal ban. He said that he spoke with many landscapers and found that they would accept having later start times of operation for all lawn equipment since many surrounding communities have later start times already. The ordinance as it stands allows landscapers to use equipment starting at 7am.

Ald. Hess-Mahan wanted to have a public meeting to discuss this more fully. He would like to put together a new draft of the ordinance and get input from the Parks and Recreation Department as well as landscapers and members of the public. Ald. Brandel asked if there would be a distinction between commercial and private use. Ald. Hess-Mahan said he would probably keep it uniform as the majority of the complaints came from people being disturbed *early in the morning* by both landscapers and neighbors. Ald. Hess-Mahan thought it would be best to hold the item and gather the necessary input via the public meeting. The Committee voted in favor to hold the item 6-0.

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO.

April 22, 2008

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

1. That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended by inserting in Chapter 20, *Offenses and Miscellaneous Provisions* the following new Section 14:

Sec. 20-14 Restrictions on Use of Leaf Blowers Within City Limits.

Whereas, in order to control unnecessary, excessive, and annoying noise, fumes, dust and debris and to protect the environment and the health and well-being of residents of the City of Newton, it is hereby declared to be the policy of the City to regulate such noise, fumes, dust, and other debris generated by the use of leaf blowers within the City Limits.

- (a) **Definitions.** A “leaf blower” is a motorized device powered by fuel and/or electricity used in any landscape, maintenance, construction, property repair, or property maintenance activity for the purpose of blowing, dispersing, vacuuming or redistributing dust, dirt, leaves, grass clippings, cuttings and trimmings from trees or shrubs, or other debris.
- (b) **Use of Leaf Blowers Restricted.** It shall be unlawful for any person to operate any leaf blower within the City limits during the period from May 1 through and including September 30.
- (c) **Temporary Moratorium on Restrictions During Times of Emergency.** During times of emergency caused by a storm or other special circumstances, the Mayor may declare a temporary moratorium on the operation of the foregoing

restriction to permit the use of leaf blowers within the City limits for purposes of cleaning up from such storm or other special circumstances.

- (d) **Operation of Leaf Blowers Without Original Equipment Supplied by Manufacturer Prohibited.** No person shall operate any leaf blower without attachment of all mufflers and full extension tubes supplied by the manufacturer for that leaf blower.
- (e) **Use of Leaf Blowers Subject to Noise Control Ordinance.** The use of leaf blowers not otherwise prohibited by the provisions of this ordinance is subject to the provisions of the Noise Control Ordinance, in Section 20-13 of these Revised Ordinances.
- (f) **Use of Leaf Blowers In Close Proximity to Operable Windows, Doors, or Mechanical Air Intake Openings or Ducts Prohibited.** Leaf blowers shall not be operated in close proximity to any operable window, door, or mechanical air intake opening or duct of any building so as to deposit debris within such windows, doors, openings or ducts unless with the permission of the occupants of the building.
- (g) **Blowing or Depositing Debris onto Neighboring Properties and Public Right-of-Way Prohibited.** Any person operating a leaf blower shall not cause dust, dirt, leaves, grass clippings, cuttings and trimmings from trees or shrubs, or other debris to be blown or deposited on any adjacent or neighboring properties without permission of the owners of such properties, or onto any part of the public right-of-way, including but not limited to sidewalks, streets or storm drains, without permission from the Commissioner of Public Works. Notwithstanding the foregoing provision, a person shall not be in violation of this section for depositing leaves, grass clippings, cuttings and trimmings from trees or shrubs, or other debris on part of a public right-of-way if that person removes the debris immediately thereafter and disposes of the debris in a sanitary manner which will prevent dispersal by wind, vandalism, or similar means. This section does not prohibit any person from placing leaf and yard wastes for collection pursuant to and in compliance with the provisions of Section 11-8 of these Revised Ordinances and the rules and regulations promulgated thereunder.
- (h) **Policies to Ensure Compliance with Foregoing Restrictions by City Departments Responsible for Maintaining City-Owned Property.** Any and all City departments responsible for maintaining City-owned property shall develop, implement and enforce policies to ensure compliance by City employees and

contractors with the foregoing restrictions, and any applicable state or federal laws or regulations concerning occupational safety and health standards relating to the operation of leaf blowers, including, but not limited to the provision and use of appropriate protective gear.

- (i) **Violations.** Each instance in which a person operates a leaf blower within the City limits in violation of the foregoing provisions of this ordinance shall constitute a separate violation of the ordinance. If the person who violates the foregoing provisions of this ordinance is an employee acting under the supervision and control of an employer, and such violation is committed with the knowledge and consent of such employer, the employer shall be deemed to have committed such violation and the employee shall not be liable therefor.

- (j) **Notice.** Notice of the provisions of this ordinance restricting the use of leaf blowers, and penalties for violations of such provisions, in a form to be provided by the City, shall be posted and conspicuously displayed in all stores selling leaf blowers within the City limits and provided to any person who commits his or her first offense in violation of this ordinance.

2. The Revised Ordinances of Newton 2007, as amended, are hereby further amended by adding the following additional paragraph to subsection (d) of Section 20-21, Enforcing persons and revised ordinances subject to civil fine:

Section 20-14 Restrictions on Use of Leaf Blowers Within City Limits

- () First offense: warning
- () Second offense: \$75.00
- () Third offense: \$150.00
- () Fourth and subsequent offenses: \$300.00