

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JANUARY 21, 2009

Present: Ald. Johnson (Chairman), Freedman (Vice Chairman), Baker, Brandel, Hess-Mahan, Merrill, Parker and Sangiolo

Also Present: Ald. Gentile, Danberg and Harney

Others Present: Kelly Byrne (Director, Newton Retirement Dept.), Paul Bianchi (Newton Retirement Board), Bob DeRubeis (Deputy Commissioner, Parks & Recreation Dept.), Tom Daley (Commissioner, Department of Public Works), Ouida Young (Associate City Solicitor), Karyn Dean (Committee Clerk)

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]

**ACTION:** **APPROVED 6-0 (Ald. Baker and Sangiolo not voting)**

**NOTE:** The Committee voted to approve this re-appointment.

#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]

**ACTION:** **APPROVED 6-0 (Ald. Baker and Sangiolo not voting)**

**NOTE:** Craig Manseau, Executive Secretary of the Elections Commission, provided the Committee with the municipal elections calendar for 2009. The Preliminary election will be held on September 15, 2009 and the municipal election will be held on November 3, 2009. The Committee voted to approve this item.

**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**

**ACTION: APPROVED 4-0 (Ald. Freedman, Hess-Mahan, Merrill and Parker not voting)**

**NOTE:** Ald. Harney noted that he has historically been opposed to asking for special legislation for situations he felt were not very special. In this case, however, he felt this was an appropriate use and would like Mr. Albano to have the opportunity to make his case.

History

The purpose of this special legislation would be to exempt Frank Albano from the usual retirement law requirement that a member 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.

Kelly Byrne, Director of The Retirement Department, referenced a memo from Marie Lawlor of the Law Department which summarized the facts of this case. It was attached to the agenda. Ms. Byrne explained that Mr. Albano was employed by the Newton Recreation Dept. for about 18 years. When he left employment, he took a refund of his retirement account but then re-entered service in August of 2003 with the Recreation Dept. At that time, he came to Ms. Byrne for advice regarding re-depositing his retirement fund back into the system. He wondered if he should do that as it was a sizeable amount of money, and he wanted to understand how that would impact his pension benefit. Ms. Byrne told Mr. Albano that the two-year rule would not apply to him because he had over 10 years of creditable service prior to his last separation from City employment. She made this advisement based on the language provided by the Public Employee Retirement Administration Commission (PERAC) in their 2003 guidelines.

PERAC Response

In 2008, PERAC issued a memo to retirement boards that contradicted the two-year rule language that was in their 2000 guide. (PERAC said they revised the retirement guide in February of 2006.) This memo brought Mr. Albano's case to mind for Ms. Byrne and she contacted PERAC. The return memo from PERAC admits to "ambiguous" language on this issue. Ms. Lawlor researched this issue and advised the Board of Aldermen that the language that Ms. Byrne relied on was not merely ambiguous, but misleading.

Ms. Byrne noted that the pension in question was about \$7,100 a year. She reported that the Retirement Board had its monthly meeting today and voted to send a letter to the PERAC Commission members letting them know that they would appreciate their support in this case.

The Committee members felt this was well justified as Ms. Byrne gave most reasonable advise using the guidelines that were provided. The Committee voted in favor of this item.

**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]

**ACTION: APPROVED 6-0 (Ald. Baker and Hess-Mahan not voting)**

**NOTE:** Bob DeRubeis, Deputy Commissioner of the Parks & Recreation Dept., explained that this money was for snow and tree emergencies from July 1, 2008 through January 12, 2009. Since submitting this item, however, there was another snowstorm which depleted their funds by another \$100,000 or so. With this appropriation, they will have \$81,000 left for equipment rental and about \$30,000 left for overtime. Mr. DeRubeis said he didn't amend the item to account for the recent storm because he didn't have the solid numbers yet.

Amendment for Finance Committee

Mr. DeRubeis later reported that he did amend the amount for the Finance Committee and asked for an additional appropriation of \$110,212 to cover the January 18-19, 2009 snowstorm. Equipment rental costs were \$102,586, and overtime costs were \$7,626. This will leave \$181,400 for rental equipment costs, and \$40,402 for overtime costs for the rest of the fiscal year.

The Committee voted in favor of this item.

**NOTE ON THE SNOW SUBCOMMITTEE:** Ald. Brandel reported that the Snow Subcommittee has been meeting with DPW, Parks & Recreation and Newton Police, and has been going through the operations of snow removal in great detail. They recently discussed having an aldermanic review of each of the sidewalk plowing pathways, ward by ward. The School Committee Operations Department goes over this with DPW and Parks & Recreation at the beginning of each year. However, there are some gaps that need to be addressed and they are looking into ways of solving these and other problems.

**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]

**ACTION: APPROVED 7-0 (Ald. Hess-Mahan not voting)**

**NOTE:** Bob DeRubeis noted that \$25,000 of this request was seed money for the playgrounds. The Parks & Recreation Department has been in touch with the Burr School and Solomon Schechter Playground groups to let them know that this money would be coming, and they should start their own fundraising.

Ald. Parker asked what Fibar was made of. The Committee Clerk researched the make-up of Fibar and it is described as engineered wood fiber that is made from virgin wood and not used wood. It meets all the requirements of ASTM F1292 for safety, F2075 for purity, and F1951 for wheelchair access. All testing is certified by IPEMA to meet federal CPSC guidelines. Ald. Parker would like to know if any of the parks surfaces contain recycled rubber tires. A memo from Bob DeRubeis is attached to this report with that information.

Ald. Sangiolo asked if playground equipment could be re-used after it was removed. Mr. DeRubeis said that the equipment was usually removed because it was unsafe or broken in some way. Also, the removal itself was difficult as it needed to be pulled out of concrete and tended to leave the equipment unstable and unusable.

Ald. Brandel asked if there were any guidelines regarding the use of the private money versus the city money. Mr. DeRubeis said the funds were put together to be used in the best way possible. The private groups raise much more money than what the City contributes. The cost of playground equipment is quite high making \$12,500 for each park only a small contribution from the City.

The Committee voted in favor of this item.

**NOTE ON CRYSTAL LAKE:** Ald. Baker reported that the Recreation Commission would be meeting on Monday, January 26, 2009 at 7pm and would be taking up the topic of extending the swimming season at Crystal Lake. This item was taken up at the January 7, 2009 Programs & Services Committee meeting, and the Committee asked that the date be reported back to them when it was known.

#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]

**ACTION:** **HELD 6-0 (Ald. Baker and Sangiolo not voting)**

**NOTE:** Ald. Sangiolo explained that there were two community groups that were interested in using the branch library buildings – one in Auburndale and one in Waban. At the last discussion of this item, Sandy Pooler, Chief Administrative Officer, presented some guidelines from the Mayor regarding the use and operation of these buildings. Ald. Sangiolo felt that more substantive guidelines were needed and provided a handout for the Committee. It is attached to this report. This proposed policy was also delivered to Ald. Lennon because there may be interested groups in Newton Corner and Nonantum as

well. Ald. Lennon was in favor of a uniform policy as long as it gave the groups some flexibility to continue their contracts after the first year.

Ald. Brandel said they would like to see a uniform policy adopted for the use of the branch library buildings. The items in this policy are part and parcel of the proposals that have been submitted to the Mayors office by the various community groups. He thought that the Auburndale group submitted their proposal today.

Real Property Reuse

Ald. Parker was concerned that since the library buildings were declared surplus that they were subject to the Real Property Reuse ordinance. The current ordinance states that once a department declares a building surplus for their purposes, it has to go out to a joint advisory planning group unless another department wants it. He felt the Law Department should be consulted on this. Ald. Sangiolo said the buildings were not declared surplus but were given to Public Buildings and Dan Funk from the Law Department was present at the meeting with the Auburndale and Waban groups. Mr. Funk reported that the buildings have not been technically declared surplus by the Library Trustees, so the reuse process is not implicated at this time. There will be licenses (as opposed to leases) granted which are also outside the scope of the reuse process.

Follow Up

Since the request was for the Mayor to come up with a written policy, Ald. Johnson asked that the Mayor review the Policy that Ald. Sangiolo and Ald. Brandel are proposing before the committee acts on the item. Ald. Brandel said that the Mayor would receive the Policy for review and felt they could vote this at the next meeting.

The Committee voted to hold this item.

**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]

**ACTION:** **HELD 7-0 (Ald. Hess-Mahan not voting)**

**NOTE:** Ald. Johnson, Albright and Linksy have asked that this item be held for the time being. The Committee voted to hold this item.

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

**ACTION:** **NO ACTION NECESSARY (Ald. Sangiolo not voting) ON PART A HELD 8-0 ON PART B AND PART C**

**NOTE:** Ald. Parker explained that there were a couple of issues still outstanding in terms of the work that was done on the Noise Ordinance. He filed this docket item to address them.

**Part A** of this item concerned the cumulative effect of noise sources. He felt it made sense to test the cumulative level of noise instead of individual pieces of equipment in order to evaluate the overall impact. The measurement would be taken from a property line or from 50 feet of the noise source, whichever was closer to the offended party.

**Part B** concerned a source-based exemption for noise from birds. Ald. Parker didn't feel that birds should be singled out for exemption. Ald. Danberg wondered who would be affected should the ordinance change in this way. She felt that if there have not been any significant problems with this exemption, then a change was not necessary. David Naparstek, Commissioner of Health and Human Services, sent a memo listing the bird/chicken owners in the City and there were approximately 20. Ald. Parker pointed out that there were not really that many complaints for bird noise, but the point was to remove inconsistencies in treatment of noise sources in order to be fair. He would like the decibel level to be as it is with the other noise sources currently in the ordinance (10 dB over background noise, or 5dB over background noise for a tonal noise). Ald. Hess-Mahan wondered about barking dogs and Ald. Parker pointed out that they are covered under a separate barking dog ordinance.

**Part C** addressed the question of parity in terms of allowable construction noise on Saturday and Sunday. Currently, construction is prohibited on Sundays all together. Ald. Parker noted that Saturday and Sunday are days of rest for different groups of people. The ordinance, as currently written, provides protection for those who recognize Sunday as their day of rest and quiet. People for whom Saturday is a day of rest are prohibited from doing work on their own homes on Sunday. This would include even the simplest tasks like hammering a nail. These are people who are prohibited, for religious reasons, for doing the work on Saturday. This change would only apply to homeowners doing work on their own homes on Sunday and within the noise limits described in the noise ordinance for Saturday. Ald. Hess-Mahan felt that people needed more freedom to work on their own homes and there needed to be some relief. Commercial construction is not allowed under Massachusetts Blue Laws on Sundays.

#### Proposed Changes

Ald. Parker proposed making both weekend days equal. The ways to do that would be to disallow construction noise on Saturdays as well; remove the limit on Sunday noise generation to match Saturday; or adjust the current limitations but make them equal for both days. He felt the simplest solution to put out for public comment would be to adjust the limits and make them equal for both days. He proposed 9:00 am to 7:00 pm. He thought this might be controversial for some, but he felt it was a good compromise. His concern with a public comment meeting was he did not think that many people who supported this change would show up. They have expressed to him that they were fearful of being seen as troublemakers or provocateurs.

Concerns

Ald. Johnson was worried that people may stretch the definition of private work being done on a home as opposed to commercial work. For instance, saying that people working on one's home are family or friends when they may not be. Tom Daley pointed out that the Department of Public Works does work around the City on Saturdays. It would be extremely rare to do any work on Sundays. His crews start early to get the work done, so starting later in the day may prove to be problematic. Ald. Johnson wondered if the Blue Laws regarding prohibiting commercial construction work on Sundays applied to the City. Ouida Young, Associate City Solicitor, said she would get that information.

Research

Ald. Johnson asked if Ald. Parker had done any research on what other communities have done in regard to all of these issues. Ald. Parker said that his research in the past has shown that cities and towns have noise ordinances that are very varied. From what he has seen, he came up with his current suggestions. Ald. Johnson would like Ald. Parker to bring in some research and models from other communities. She also asked him to consult with the Police Department regarding enforcement of these changes. Ald. Parker will also get some draft language from the Law Department for the ordinance changes.

Enforcement

Ald. Brandel wondered how often the City departments and/or Police Department received complaints on noise issues and how they were enforced. Members of the Newton Police Department reported at the October 3, 2007 meeting of Programs & Services, that noise complaints from January through September of 2007 were as follows: 600 complaints in general, 20 from landscaping, 27 from construction, 1 from air conditioning, and 1 from a fountain. No fines were imposed on any of these violations. Ald. Brandel felt it wasn't a prudent use of time to make changes to an ordinance that was not being fully enforced. Ald. Parker felt that was a compelling argument and perhaps the item should just be voted and a lot more time shouldn't be devoted to this. However, a public comment meeting has been announced and people are expecting that to happen.

Public Comment Opportunity

This item will be taken up at the March 4, 2009 Programs & Services Committee meeting and there will be an opportunity for the public to comment. The Committee will plan on voting on this item at that meeting.

Separating Item

Ald. Parker would like to separate part A of this item and vote it No Action Necessary with the understanding that it would be incorporated into the parens (2) of #422-06 as noted below. The Committee voted in favor of this recommendation.

#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**

**ACTION: NO ACTION NECESSARY 7-0 (Ald. Sangiolo not voting)**

**NOTE:** Ald. Hess-Mahan felt there was no point in having another public hearing on this matter because opinions on both sides of this issue have been well represented. He continues to receive complaints about leaf blower noise, however, and would like to find some way to ameliorate the problem. He has met with landscapers and they have expressed the difficulty with the patchwork of rules and regulations around their equipment. They said they would do what they have to do and realize there are legitimate concerns. Ald. Hess-Mahan has noted that, in fact, leaf blowers were not the only problem. Other landscaping equipment all working at the same time was a significant concern as well.

Task Force

Ald. Hess-Mahan said there were myriad models for ordinances and finding a solution may take a task force. Landscapers, residents, police and any other appropriate representatives could come together to find a way to deal with this issue. He said that the City of Cambridge formed a task force and took about 18 months to come up with a model that has worked well with very few complaints. A copy of their ordinance is attached to this report.

Ald. Hess-Mahan proposed docketing a new item as a parens (2) to this item. Ald. Baker asked if it would be possible to start with the Cambridge model and make modifications from there as necessary. The air pollution concerns were addressed in the Cambridge model as well as the noise concerns and he felt it was a good place to start. Ald. Hess-Mahan noted that while the Cambridge model had much to recommend it, Cambridge did have some different issues especially in regard to large institutions like Harvard University and Lesley University. He didn't want to pick things out of the proposed ordinance that were less controversial and thought it best just to start anew. Ald. Brandel agreed that it would be best to use a different approach on this complicated issue. Ald. Brandel moved No Action Necessary and the Committee voted in favor.

The parens (2) is as follows:

#422-06(2) ALD. HESS-MAHAN requesting that a task force be established to meet and prepare a report and recommendations regarding the regulation of noise, air pollution and best practices with respect to the operation of power equipment used in landscaping, property and yard maintenance, including, without limitation, leaf blowers. [01/27/09 @ 3:47 PM]

Respectfully Submitted,  
 Marcia Johnson, Chairman





# NEWTON PARKS AND RECREATION DEPARTMENT

70 Crescent Street, Newton, MA 02466  
Office: (617) 796-1500  
Fax: (617) 796-1512



DAVID B. COHEN  
MAYOR

FRAN L. TOWLE  
COMMISSIONER

January 29, 2009

Kenneth R.L. Parker, Ward 6 Alderman  
Newton Board of Alderman  
Newton City Hall  
1000 Commonwealth Ave.  
Newton, MA 02459

Dear Alderman Parker:

I am writing in response to your inquiry about rubber surfacing under our play equipment. The following is vendor information for the three play areas that have rubber safety surfacing; two are poured in place, while one is tiles:

- the Play Area at Newton Centre Playground

**Vitriturf Cushioned Seamless Flooring System** (poured-in-place)  
manufactured by:

Hanover Specialties Inc.  
901 Motor Parkway  
Hauppauge, NY 11788  
631-231-1300  
[www.vitriturf.com](http://www.vitriturf.com)

- the Play Area at Horace Mann/Halloran Sports Complex

**Playbound®** (poured-in-place)  
manufactured by:

Surface America  
P.O. Box 157  
Williamsville, NY 14231  
1-800-999-0555  
[www.surfaceamerica.com](http://www.surfaceamerica.com)

COMMISSION  
MEMBERS

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WARD 2 – ARTHUR MAGNI  
WARD 3 – PETER JOHNSON

WARD 4 – FRANCIS J. RICE, CHAIRMAN  
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ROBIN MCLAUGHLIN – COMM. SECRETARY

ALTERNATES: MICHAEL CLARKE, PETER KASTNER, JACK NEVILLE

- the Play Area (newest addition) behind Mason-Rice

**SOFTile KrosLock** (rubber tiles)

manufactured by:

SofSURFACES Inc.

P.O. Box 239

4393 Discovery Line

Petrolia, Ontario, N0N 1 R0

1-800-263-2363

[www.sofsurfaces.com](http://www.sofsurfaces.com)

A review of the specifications indicates that both of the pour in place manufacturer's use a base surface of SBR (Styrene Butadiene Rubber), which is a post-consumer recycled rubber and a top surface consisting of EPDM (Ethylene Propylene Diene Monomer), which is a recycled post-industrial rubber. Both of these surfaces are then bound together with a urethane binder.

The tiles are a prefabricated product often supplied in a mat or tile form. They are generally made from a combination of SBR and EPDM rubber combined with a polyurethane resin, similar to the poured in place. The difference is the tiles are compression molded at the factory rather than on site.

I hope this information is helpful. If you need any further information, please feel free to contact me at 617-796-1500.

Sincerely,

Robert J. DeRubeis  
Deputy Commissioner

cc: Fran Towle, Commissioner

DRAFT dated January 21, 2009

### Policy for Use of Former Branch Libraries

The City will use a common, uniform license agreement as the contractual arrangement between interested community groups to utilize the former branch library buildings.

With each license agreement the City agrees to remain responsible for maintenance of the facility, including but not limited to, snow removal, grass cutting, upkeep of the building, custodial services, and any necessary repairs.

With each license agreement, the City will remain responsible for insurance covering the building.

Each community group will be responsible for cleaning any portion of the building that they use as detailed in their respective license agreements. Groups will be responsible for reimbursing the city for custodial or repair costs, if necessary.

The City will establish a uniform operating cost structure for all licensees, based on a % use basis, where each community group shall be responsible for that portion of the utility costs associated with their use of the facility.

Each community group will have the right to sublease portions of the space to compatible neighborhood activities including commercial entities deemed agreeable to it and the City. Proceeds from the sublease will be used by the community group to cover costs associated with building use and operations.

Each community group shall enter into a one-year license agreement with the option to renew and to renegotiate or negotiate into a lease agreement. Community groups will be required to pay costs on the first date of each month. Failure to meet the payment terms within a reasonable grace period will result in the termination of the agreement.

All books shall remain hosted on the premises for use by the communities and any other books acquired by the community groups shall remain the property of the community group.

Each branch has the option to establish a uniform library card to check out and return library books on an agreed upon basis with the main library.

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#292-08(2)

Chapter 8.16 NOISE CONTROL

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Section 8.16.081.2 Limitations on Use.

- a. The use of *leaf* blowers is prohibited except between March 15 and June 15 and between September 15 and December 31 in any year. The provisions of this subsection 8.16.081.2.2(a) do not apply to the use of *leaf* blowers in accordance with the provisions of this *Leaf Blower Ordinance* and regulations promulgated hereunder by municipal operators and municipal contractors performing *leaf blower* operations in Mayor Thomas W. Danehy Park, Fresh Pond Reservation, Thomas P. O'Neil, Jr. Municipal Golf Course at Fresh Pond, Cambridge Municipal Cemetery, Old Burial Ground or performing emergency operations and clean-up associated with storms, hurricanes and the like or by operators performing *leaf blower* operations on one or more adjoining parcels of land in common ownership that together comprise a total of two (2) acres or more, so long as the owners of such land comply with the provisions of subsection 8.16.081.2.2(c).
- b. The use of *leaf* blowers is further prohibited on Sundays and legal holidays except Columbus Day and Veterans' Day and prohibited on other days except between the hours of 8:00 a.m. and 5:00 p.m. Mondays through Fridays and 9:00 a.m. and 5:00 p.m. Saturdays, Columbus Day and Veterans' Day. Commercial *leaf blower* operators may operate *leaf* blowers between the hours of 12:00 noon and 5:00 p.m. only on Columbus Day and between the hours of 1:00 p.m. and 5:00 p.m. only on Veterans' Day, consistent with the provisions of G.L. c. 136, §13 as it may be amended. The provisions of this subsection 8.16.081.2.2(b) do not apply to the use of *leaf* blowers in accordance with the provisions of this *Leaf Blower Ordinance* and regulations promulgated hereunder by municipal operators and municipal contractors performing *leaf blower* operations in Mayor Thomas W. Danehy Park, Fresh Pond Reservation, Thomas P. O'Neil, Jr. Municipal Golf Course at Fresh Pond, Cambridge Municipal Cemetery, Old Burial Ground or performing emergency operations and clean-up associated with storms, hurricanes and the like or by operators performing *leaf blower* operations on one or more adjoining parcels of land in common ownership that together comprise a total of two (2) acres or more, so long as the owners of such land comply with the provisions of subsection 8.16.081.2.2(c).
- c. Commercial *leaf blower* operators and owners of one or more adjoining parcels of land in common ownership that together comprise a total of two (2) acres or more seeking to operate *leaf* blowers on such land shall not be permitted to operate *leaf* blowers, but may be exempted from the prohibition of this subsection 8.16.081.2.2(c) if they submit an operations plan to the City Manager or his or her designee for review and approval. At a minimum, the operations plan shall: address the owner's or operator's efforts to mitigate the impacts of noise and emissions upon citizens and the occupants and owners of nearby property, include an inventory of all *leaf* blowing equipment owned and to be used by the owner or operator in its operations program, which shall comply with the noise and emission restrictions set forth in this *Leaf Blower Ordinance* and regulations promulgated hereunder, and include the owner's or operator's plan for educating users of its equipment on the proper use of equipment as well as the need to mitigate impacts upon others. The operations plan shall be reviewed by the City Manager or his or her designee, who shall ensure that it complies with the applicable provisions of this *Leaf Blower Ordinance* and regulations promulgated hereunder, and shall impose any conditions that may be required in order for the owner or operator to comply with the provisions of this *Leaf Blower Ordinance* and regulations promulgated hereunder. No operations plan submitted by owners of one or more adjoining parcels of land in common ownership that together comprise a total of two (2) acres or more seeking to operate *leaf* blowers on such land shall be approved by the City Manager unless there has been a showing of significant hardship.
- d. *Leaf blower* operations shall not cause leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris to be blown or deposited on any adjacent or other parcel of land, lot, or public right-of-way/property other than the parcel, land, or lot upon which the *leaf blower* is being operated. Leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris shall not be blown, swept or raked onto or into an adjacent street or gutter, except by municipal employees or municipal contractors or *leaf blower* operators placing leaves, dust, dirt, grass clippings, cuttings and trimmings from trees and shrubs on a municipal street or sidewalk for collection and pick-up, during municipal street and sidewalk sweeping and cleaning operations. In no event shall leaves, dirt, dust, debris, grass

## Section 8.16.081.2 Limitations on Use.

clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris be blown, swept or raked onto or into catch basins or onto vehicles, persons or pets. Deposits of leaves, dirt, dust, debris, grass clippings, cuttings or trimmings from trees or shrubs or any other type of litter or debris shall be removed and disposed of in a sanitary manner which will prevent dispersment by wind, vandalism or similar means.

e. All *leaf blowers* shall satisfy the emissions standards of the United States Environmental Protection Agency and noise level standards as follows: the sound emitted from any *leaf blower* shall be rated by the manufacturer to be no greater than 65 decibels.

f. On parcels of 10,000 square feet or less, only one *leaf blower* at a time may be used, and on parcels larger than 10,000 square feet, only one *leaf blower* may be used within each 10,000 square foot area.

(Ord. 1311, Added, 12/10/2007)

## Section 8.16.081.1 Use Regulations.

Remove highlighting.

Chapter 8.16 NOISE CONTROL

## Section 8.16.081.1 Use Regulations.

Use Regulations. The use of *leaf* blowers shall be regulated as follows:

1. *Definitions.*

a. *Definition of leaf blower.* Leaf blowers are defined as portable, handheld or back pack style power equipment that is powered by fuel or electricity and used in any landscape maintenance, construction, property repair, or property maintenance for the purpose of blowing, moving, removing, dispersing or redistributing leaves, dust, dirt, grass clippings, cuttings and trimmings from trees and shrubs or any other type of litter or debris.

b. *Definition of commercial leaf blower operator.* Any entity or organization that employs two (2) or more employees that receives income, remuneration or compensation of any kind, whether as a fee, a charge, a salary, wages or otherwise, for operating a *leaf blower*, except that municipal operators and municipal contractors are excluded from this definition.

(Ord. 1311, Added, 12/10/2007)