

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEES AGENDA

WEDNESDAY, JUNE 18, 2008

ITEMS SCHEDULED FOR DISCUSSION:

#329-05 ALD. JOHNSON & ALD. ALBRIGHT requesting that the **Noise Ordinance** be revised and updated to better reflect the noise problem being faced by the City.
PROGRAMS & SERVICES APPROVED AS AMENDED 4-1-3
(Merrill opposed; Baker, Brandel, Sangiolo abstaining) on 3/19/08
MOTION TO RECOMMIT TO PROGRAMS & SERVICES
VOICE VOTE APPROVED ON 05-05-08

#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
MOTION TO RECOMMIT TO PROGRAMS & SERVICES
VOICE VOTE APPROVED ON 4-22-08

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

Appointment by His Honor the Mayor

#223-08 KATHLEEN HEITMAN, 751 Saw Mill Brook Parkway, Ward 8, as a member of the Newton Parks and Recreation Commission for a term to expire on June 30, 2011 (60 days: 08-18-08) [06-09-08 @ 2:06 PM]

Appointment by His Honor the Mayor

#205-08 BARBARA SMILEY, 1073 Walnut Street, Newton Highlands, appointed as a member of the URBAN TREE COMMISSION for a term to expire on May 30, 2011 (60 days: 08-02-08). [5-27-08 @ 12:50 PM]

Appointment by His Honor the Mayor

#173-08 BARBARA LIETZKE, 68 Highland Avenue, Newtonville, appointed as a member of the NEWTON FREE LIBRARY BOARD OF TRUSTEE to replace Sandra Butzel for a term to expire June 30, 2010 (60 days: 07-04-08). [4-11-08 @ 9:41 AM]

- #224-08 HIS HONOR THE MAYOR requesting to submit Home Rule Legislation to establish a permanent fund for the maintenance of artificial turf fields at Newton South High School. [06-10-08 @ 5:12 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]
- #206-08 ALD. YATES proposing a RESOLUTION requesting the Library to leave the book collections in the branch libraries after they are closed to allow neighborhood based efforts to continue library service, in some form, to begin with a critical mass of books. [05-22-08 @ 10:43 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]
- #128-08 ALD. YATES requesting a RESOLUTION to congratulate Newton resident, Harvard Law Professor Mary Anne Glendon on her appointment as US Ambassador to the Vatican. [03-03-08 @11:01 PM]

#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]

HELD 4/23/08

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]

#7-08 ALD. ALBRIGHT requesting to create a task force whose members will be jointly appointed by the Mayor and the Board of Aldermen to investigate the creation of a Commission on Public Art. The job of the Commission would be to raise funds, solicit commissions, and select public art for villages and/or parks. [12-18-07 @ 12:48 PM]

HELD 4/23/08

REFERRED TO PROGRAMS AND SERVICES AND FINANCE COMMITTEES

#397-07 ALD. JOHNSON AND COLETTI requesting to increase the fee for dogs being off-leash except where dogs are legally able to be off-leash.

[12-04-07 @ 12:22 AM]

HELD 1/23/08

#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]

REFERRED TO LAND USE & PROGRAMS AND SERVICES COMMITTEES

#274-07 ALD. SANGIOLO proposing that Article X of the Rules & Orders of the Board relative to Special Permit and Site Plan Approval Petitions be amended to require the applicant to post on the subject property a notice that would include but not be limited to identifying the subject matter and the date and time of the public hearing.
LAND USE APPROVED 7-0 on 2-12-08

#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]

#130-07 ALD. LENNON proposing amendments to Section 20-56, **Musical performers; regulations; license.**

#114-07 ALD. LINSKY requesting to evaluate whether the present location of the Johnny Kelley statue represents the best possible location for achieving the established purpose when it was erected. [04-10-07 @ 7:39 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 proportion 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 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 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 4/23/08

**REFERRED TO PROGRAMS AND 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

SUMMARY OF NOISE ORDINANCE POLICY DIFFERENCES

Noise Pollution – Added a definition of noise pollution, that does not exist in current ordinance.

Disturbing the Peace – Added a section regarding unreasonable or excessive noise between 11:00 p.m. and 7:00 a.m. Persons or establishments with a valid license/permit from any department, board or commission of the City of Newton authorized to issue such license or permit are exempted. Excessive noise shall be defined as 5dB(A) above background level

Noise Levels

- Vehicular Source – eliminated the different mph variations and have one dB(A) level
- Reduced dB(A) levels for yard, garden, grounds maintenance equipment to 65 dB(A) over a four year period.
- Added rock crushing activity to the definition of construction and demolition
- Added maximum noise levels for HVAC systems not to exceed (5) dB(A) above background noise level. [This is both residential and commercial as the draft does not distinguish]

Construction – Changed weekend times that construction noise is prohibited to Friday evening from 7pm to 11am the following morning; Saturday evening from 7pm to 11am the following morning; Sunday evening from 7pm to 7am Monday morning.

Alternative Measurement Procedures - This addresses if the measurement cannot be made as prescribed in the ordinance.

Permits for Exemptions - Added in language to have the mayor file permits [exemptions] with the clerk of the board of aldermen and to each ward alderman for the affected ward.

Non-criminal disposition – Language was added to allow non-criminal ticketing as an enforcement option for the Police. The non-criminal fine is \$50. Criminal enforcement remains in place.

ARTICLE II. NOISE

Sec. 20-13. Noise control.

Formatted: Font: 12 pt

(a) This ordinance may be cited as the "Noise Control Ordinance of the City of Newton."

(b) Declaration of findings and policy. Whereas excessive sound is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive sound may be substantially abated; and, whereas the people have a right to and should be ensured an environment free from excessive sound that may jeopardize their health or welfare or safety or degrade the quality of life; now therefore it is the policy of the City of Newton to prevent excessive sound which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(c) Scope. This ordinance shall apply to the control of all sound originating within the limits of the City of Newton except as follows:

- (1) the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work or in training exercises related to emergency activities; and
- (2) all snow clearance activities; and
- (3) any program or activity supervised by the parks and recreation department of the city in effect and as it exists on June 1, 1983.

(d) Definitions. For the purposes of this ordinance the following words and phrases shall have the meanings respectively ascribed to them by this section:

Construction and demolition: Any excavation, hightway construction, land development or land clearing work, or the erection, demolition, alteration, repair or relocation of any building or structure, which uses powered equipment such as backhoes, trucks, tractors, excavators, earth moving equipment, compressors, motorized, or power hand tools, manual tools, or equipment of a similar nature as well as two-way radios or other communication equipment; or use of any equipment, for recycling, screening, separating, or any other processing of soil, rocks, concrete, asphalt or other raw material.

Deleted: any site preparation, assembly, erection, substantial repair, alteration, destruction or similar action for public or private rights-of-way, structures, utilities, or similar property.

Deleted: ¶

Electronic devices: any radio, tape recorder or player, television, phonograph, public address system, loudspeaker, amplified musical instrument or any other similar device, except two-way communication radios.

Emergency: any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work: any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR): the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

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

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

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

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

(f) *Time Restrictions.* [COMMENT: placement of this relettered paragraph will be made accordingly]

(1) Notwithstanding the provisions of Section (e) and subject to the maximum noise levels listed in Section (g), the generation of any noise from all electric motors and/or internal combustion engines employed in yard, garden or grounds maintenance is prohibited except during the following time periods:

(A) Between 7:00 a.m. and 8:00 p.m. on weekdays; or

(B) Between 9:30 a.m. and 8:00 p.m. on Saturdays, Sundays and legal holidays as established in Section 2-26 of these revised ordinances.

(2) Notwithstanding the provisions of Section (e) and subject to the maximum noise levels listed in Section (g), the generation of any noise from construction and demolition activity is prohibited except during the following time periods:

(A) Between 7:00 a.m. and 7:00 p.m. on weekdays; or

(B) Between 11:00 a.m. and 7:00 p.m. on Saturdays, Sundays and legal holidays as established in Section 2-26 of these revised ordinances.

(3) All public address loudspeakers, either mobile or stationary, shall be prohibited from operating every evening from 9:00 p.m. until 7:00 a.m. the following morning.

(4) No automobile, motorcycle, truck or vehicle-mounted refrigeration equipment, or other motorized vehicle, shall be left running when not in traffic, within three hundred (300) feet of any dwelling, hotel or residence, for a period of greater than five (5) minutes.

(5) Between the hours of midnight and 6:00 a.m. deliveries and pick-ups for commercial or business purposes are prohibited within 300 feet of any dwelling within a residential zone excepting deliveries to such dwellings, deliveries of gasoline to gasoline stations, deliveries or pick-ups at state or federal governmental offices and any other commercial or business delivery or pick-up operation that does not increase noise levels 5dB(A) or more above background noise level. For purposes of this subsection, "deliveries" and "pick-ups" shall include the

Deleted: e

Formatted: Font: 12 pt, Font color: Blue

Formatted: Font: 12 pt

Deleted: All electric motors and internal combustion engines employed in yard and garden maintenance shall be prohibited from use on Sunday through Thursday evenings from 8:00 p.m. until 7:00 a.m. the following morning, and on Friday and Saturday evenings from 8:00 p.m. until 9:30 a.m. the following morning.

Deleted: ¶

Deleted: All electric motors and internal combustion engines employed in outdoor construction, demolition, or earth moving shall be prohibited from use every evening from 7:00 p.m. until 7:00 a.m. the following morning, except on Friday evening from 7:00 p.m. until 8:00 a.m. on Saturday morning; and provided that all such devices shall be prohibited from operating at any hour on Sunday except by permit issued by the mayor or his designee in accordance with the provisions of subsection (h)(1) unless declared as emergency work pursuant to subsection (c)(1).¶

Provided, however, that all electric motors and internal combustion engines employed in outdoor construction, demolition, or earth moving that is conducted pursuant to a building permit or special permit issued prior to March 28, 2000, shall not be subject to the provisions of the prior paragraph, but instead shall be prohibited from use every evening from 7:00 p.m. until 7:00 a.m. the following morning, except on Sunday, when all such devices shall be prohibited from operating at any hour except by permit issued by the mayor or his designee in accordance with the provisions of subsection (h)(1) unless declared as emergency work pursuant to subsection (c)(1).

Deleted: the following:¶

¶ a)

loading and unloading of a vehicle.

(6) Between the hours of 7:00 p.m. and 7:00 a.m. trash collection shall be prohibited within five hundred (500) feet of any dwelling.

(7) Between the hours of 11:00 p.m. and 7:00 a.m. no person or persons shall disturb the peace by causing or allowing to be made any unreasonable or excessive noise, including but not limited to such noise resulting from the operation of any electronic device, or from the playing of any band or orchestra, or from the making of excessive outcries, exclamations, or loud singing or any other excessive noise by a person or group of persons, provided however, that any performance, concert, establishment, band group or person who has received and maintains a valid license or permit from any department, board, or commission of the City of Newton authorized to issue such license or permit shall be exempt from the provisions of this section. Unreasonable or excessive noise for the purposes of this section shall be defined as 5dB(A) or more above background level when measured not closer than the lot line of a residential lot or from the nearest affected dwelling unit.

Formatted: Indent: Left: 20 pt, Hanging: 16 pt

Formatted: Font: 12 pt

(g) Maximum Noise Levels. Notwithstanding the provisions of subsections (e)(1) and (e)(2), the following are the maximum noise levels that are permitted for the specified noise sources: [COMMENT: placement of this relettered paragraph will be changed accordingly]

Deleted: f

Deleted: g

Deleted: g

Formatted: Font: 12 pt, Font color: Blue

Formatted: Font: 12 pt

(1) Vehicular sources.

Maximum noise level dB(A) permitted

Stationary or Moving

Vehicle Class

All vehicles over 10,000 lbs. GVW or GCWR	86
All motorcycles	82
Automobiles and light trucks	75

Deleted: Run-Up,¶

Deleted: Speed Limit Speed Limit

Deleted: 35 mph or less 35-45 mph

Deleted: 90¶

Deleted: 82¶

Deleted: 75

Noise measurements shall be made at a distance of fifty (50) feet from the closest point of pass-by of a source or fifty (50) feet from a stationary vehicle.

Deleted: M

(2) Construction equipment.

Maximum noise level dB(A) permitted

Deleted: and maintenance

Formatted: Font: 12 pt, Italic

Formatted: Font: 12 pt

Deleted: Construction Item

Backhoe, bulldozer, concrete mixer, dump truck, loader, paver, pneumatic tools, roller, scraper.....90

Air compressor.....85

Generator.....90

Electric drills, sanders, saws (except chainsaws) or other power tools of all types, whether hand held or otherwise.....75

(3) Yard, Garden, or Grounds Maintenance Equipment

(i) Maximum noise level dB(A) permitted:

Commercial chipper, 3 1/2 inch or greater limb capacity (running at full speed but not chipping).....90

Commercial truck-mounted leaf vacuum.....90

All other equipment, including home tractor, leaf blower, lawn mower or trimmer.....65

Formatted: Font: 12 pt, Italic

Deleted: Item

Formatted: Font: 12 pt

Deleted: ¶
Chipper (running at full speed but not chipping), leaf vacuum . 90¶
¶
Home tractor, leaf blower . 80¶
¶
Lawn mower or trimmer . 75¶

Formatted: Indent: Left: 54 pt

Noise measurements shall be made at a distance of fifty (50) feet from the source.

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

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

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

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

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

(4) Maximum Noise Level Exclusions. The following devices shall be exempt from the maximum noise limitations set forth in subsection (f)(2) above: jack hammers, pavement breakers; pile drivers, rock drills, provided that effective noise barriers are used to shield nearby areas from a condition of noise pollution. The time restrictions contained in subsection (f)(2) shall still apply.

Deleted: ¶

Formatted: Font: 12 pt, Italic

Formatted: Font: 12 pt

Deleted: 3

Deleted: limitations

Deleted: e

(5) Maximum Noise Levels for HVAC systems. No person shall operate any air conditioning, refrigeration or heating equipment for any residence or other structure or operate any pumping, filtering or heating equipment for any pool or reservoir in such manner as to create any noise which would cause the noise level on the premises of any other occupied property or if a condominium, apartment house, duplex, or attached business, within any adjoining unit, to exceed the background noise level by more than five (5) dB(A). This provision shall not apply, however, to periodic or emergency maintenance or testing of such equipment reasonably

necessary to maintain such equipment in good working order. Noise measurements and noise pollution determinations shall be taken in accordance with subsections (e)(2) and (e)(3).

(6) *Tonal Sound Corrections.* When a tonal sound is emitted by a noise source specified in subsections (f)(1) and (f)(2) herein, the limit on maximum noise levels shall be five (5) dB(A) lower than as specified in subsections (f)(1) and (f)(2).

Deleted: 4

(7) *Alternative Measurement Procedures.* If it is not possible to make a good noise level measurement at the distance specified in subsections (f)(1) and (f)(2), measurement may be made at an alternate distance and the noise level subsequently calculated for the specified distance. Calculations shall be made in accordance with established engineering procedures.

Deleted: 5

(8) All noise-level measurements made pursuant to subsection (f) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

Deleted: 6

(e) Noise Pollution Prohibited. [COMMENT: placement of this relettered paragraph will be changed accordingly]

Deleted: g

Deleted: Sources Causing Noise

(1) No person shall willfully, negligently, or through failure to provide necessary equipment or facilities or to take necessary precautions permit the establishment or continuation of a condition of noise pollution caused by a noise source (other than a dog or bird) owned, leased, kept, or controlled by such person, or caused by any activity of such person.

Formatted: Font: 12 pt, Font color: Blue

Formatted: Font: 12 pt

Formatted: Font: 12 pt, Font color: Blue

Formatted: Font: 12 pt

Formatted: Font: 12 pt, Font color: Blue

Formatted: Font: 12 pt

(2) When the offending noise source is located in public spaces, noise measurements shall be made at, and noise pollution determinations made in relation to, any location a passerby might reasonably occupy. When the offending noise source is located on private property, noise measurements shall be made at, and noise pollution determinations made in relation to, the boundary line of the property within which the offending source is located, or as close thereto as feasible.

(3) All noise level measurements made pursuant to section (g) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

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

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

Deleted: C

Deleted: promptly after issuance

(2) The mayor or his designee may extend to a specified date the time for compliance with this ordinance in the case of any particular activity with respect to which a determination is made that

such extension is necessary to provide a reasonable opportunity for such activity to be brought into compliance. No such extension shall be granted which has the effect of exempting such activity from compliance with this ordinance. The mayor or his designee shall establish appropriate procedures for the processing of requests for such extensions of time, including such hearings as the mayor or his designee deems appropriate. Promptly after issuance, copies of all such extensions shall be filed with the clerk of the board of aldermen and to each ward alderman for the affected ward.

Deleted: ¶

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

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

Deleted: ordinance

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

Formatted: Indent: Left: 10 pt

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

Formatted: Font: 12 pt

Deleted: ¶

Deleted: k

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

Secs. 20-14—20-19. Reserved.

1. The Revised Ordinances of the City of Newton, Massachusetts 2001 are hereby amended by inserting the following Section 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 April 15 through and including October 15. 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. No person shall operate any leaf blower without attachment of all mufflers and full extension tubes supplied by the manufacturer for that leaf blower.
- (c) **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.
- (d) **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.
- (e) **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.

(f) **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.

(g) **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.

(h) **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, as amended, are hereby further amended by adding the following additional paragraphs 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