

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, JULY 9, 2008

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

Others Present: Jon Herrmann, Justin Masterman (Citizens Advisory Group Interns), Karyn Dean (Committee Clerk)

#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]

ACTION: **HELD 6-0**

NOTE: Ald. Johnson noted that her intention was to get a monthly update from the Citizen's Advisory Group. Malcolm Salter, Chair of the Citizen's Advisory Group, was unable to attend this meeting due to a prior commitment.

Interns

The Citizen's Advisory Group (CAG) recently hired two interns to assist in benchmarking and trend analysis. John Herrmann and Justin Masterman were introduced to the Committee. Their biographies are attached to this report. They started their work today determining which cities and towns to benchmark. The question of whether they will stay within Massachusetts or look beyond to other states is still under discussion. Ald. Johnson felt they would have more success finding cities/towns that were comparable to Newton in size and socioeconomic composition by extending their search outside of the state.

CAG Update

Ald. Baker said the CAG had an original scoping meeting and a second meeting that divided the group into subcommittees. The group will be having a public comment

session on July 30th. This was in response to some people saying they wanted the group to be open and responsive to outside ideas. Ald. Freedman asked if the CAG meetings could be added to the Aldermanic Calendar. An inquiry will be made to the Clerk of the Board. Ald. Baker said that Shawna Sullivan was acting as clerk for the CAG and she could be helpful with any questions. They were also trying to work out an email box.

#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.
APPROVED AS AMENDED 4-1-3 (Merrill opposed; Baker, Brandel, Sangiolo abstaining) on 3/19/08
RECOMMITTED TO PROGRAMS & SERVICES ON 05-05-08
ACTION: APPROVED AS AMENDED 5-0 (Ald. Merrill not voting)

NOTE:

Outstanding Issues

Ald. Johnson that said that two issues remained unresolved with the noise ordinance: changing of the times that construction can take place in regard to equal treatment of Saturdays and Sundays; and an issue regarding the keeping of chickens.

Construction Restrictions

In the draft that the Committee approved in March, the time that construction noise was allowed had been changed to 11am to 7pm on Saturdays and Sundays. Ald. Johnson proposed reverting back to the original allowable times for construction on the weekends which was 8am to 7pm on Saturdays and prohibited on Sundays except by permit. She was open to having Ald. Parker re-docket an item to specifically address the concerns about Saturday and Sunday restrictions. She felt this might require another public hearing and more considered discussion by the board members, and thought it would be better to deal with this on its own.

Chickens

In the current ordinance, birds are exempt from the noise ordinance. A neighbor of a chicken keeper has been expressing concerns over the noise generated by the chickens. Ald. Johnson felt this could also be dealt with separately and didn't think this should delay the passing of the ordinance.

Goals

The primary goals of reducing decibel levels, including more construction equipment that was regularly used, and streamlining the language to allow for greater enforceability, had been achieved. Ald. Baker supported Ald. Johnson's view.

Amendment and Approval

Ald. Hess-Mahan moved approval of the ordinance with the construction noise times reverted back to 8am to 7pm on Saturdays and prohibited on Sundays except by permit. The Committee voted in favor 5-0.

Attachments

The draft ordinance and a redlined version are attached to this report. Also attached is a memo with responses to Ald. Lennon's questions regarding the noise ordinance.

#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.

REFERRED TO PROG.& SERVICES, PUB. FAC. & FINANCE COMMITTEES

#55-08 ALD. SANGIOLO, HARNEY AND PARKER proposing that the Board of Aldermen request the assistance of the Massachusetts School Building Authority (MSBA) and State Treasurer Tim Cahill in managing the Newton North High School construction project, including assistance with controlling project costs. [01-22-08 @ 11:05 PM]

PUBLIC FACILITIES HELD ON 2-20-08

HELD ON 2-20-08

ACTION: NO ACTION NECESSARY 5-0-1 (Ald. Brandel abstaining)

NOTE: Ald. Johnson noted that this item was no longer timely. The construction was well under way. Contact had been made with Treasurer Cahill and there has been no further action on this. The Committee voted No Action Necessary on this item 5-0-1.

Respectfully Submitted,

Marcia Johnson, Chairman

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO.

, 2008

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

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are hereby further amended with respect to Section 20-13 as follows:

1. 20-13 (d) Definitions Delete the current definition of *Construction and demolition*, and replace in it's entirety with the following definition:

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

2. 20-13 (e) Time Restrictions. Delete Subsection (1) in its entirety and insert it its place the following language:

(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.

3. 20-13 (e) Time Restrictions. Delete Subsection (2) in its entirety and insert in its place the following language:

(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: 8:00 a.m. and 7:00 p.m. on Saturdays;

(C) Generation of any noise from construction and demolition activity is prohibited at any hour on Sundays and legal holidays as established in Section 2-26 of these revised ordinances, except by permit issued in accordance with subsection (h)(1).

4. 20-13 (e) Time Restrictions. Insert in paragraph (4) after the phrase “vehicle-mounted refrigeration equipment” and before the words “shall be left running” the following language:

“, or other motorized vehicle,”

5. 20-13 (e) Time Restrictions. Delete, in the first sentence of paragraph (5), after the word “excepting”, the following language: “the following:”, and further delete the sub- paragraph designation “(a)” such that the paragraph reads as a continuous whole with no subparagraph.

6. 20-13 (e) Time Restrictions. Insert a new paragraph (7) as follows:

(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.

7. 20-13 (f) Maximum Noise Levels. Delete the language preceding paragraph (3) and insert in its place the following language:

(f) *Maximum Noise Levels.* Notwithstanding the provisions of subsections (e)(1) and (e)(2), the following are the maximum noise levels that are permitted for the specified noise sources:

Maximum noise level dB(A) permitted:

(1) Vehicles

Vehicle Class	Stationary or Moving,
All vehicles over 10,000 lbs. GVW or GCWR.....	86
All Motorcycles.....	82
Automobiles and light trucks	75

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

(2) Construction equipment.

Maximum noise level dB(A) permitted:

Backhoe, bulldozer, concrete mixer, dump truck, loader, paver, pneumatic tools, roller, scraper90

Air compressor85

Generator 90

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

Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever distance is less.

(3) Yard, Garden, or Grounds Maintenance Equipment

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

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

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

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

Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever distance is less.

(ii) *Transition period.* Notwithstanding the maximum maintenance equipment noise levels listed in subsection (3)(i) 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

8. 20-13 (f) Maximum Noise Levels. Renumber Paragraph (3) *Maximum Noise Level Exclusions* to Paragraph (4), delete the last sentence contained in said paragraph and insert in its place the following language:

The time restrictions contained in subsection (f)(2) shall still apply.

9. Further amend 20-13 (f) *Maximum Noise Levels* by:

a. Inserting after the paragraph newly renumbered as paragraph (4) a new paragraph (5) as follows:

(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).

b. Renumbering the remaining paragraphs (4), (5), and (6) to (6), (7), and (8) respectively.

10. Further amend 20-13 by renumbering Sections 20-13 (g), 20-13(f) and 20-13(e) as follows:

a. 20-13(g) *Noise Sources causing Noise Pollution* renumbered to: 20-13(e)

b. 20-13(e) *Time Restrictions* renumbered to: 20-13 (f)

c. 20-13 (f) *Maximum Noise Levels* renumbered to: 20-13 (g);

11. Further amend 20-13 by deleting the catchline of newly renumbered 20-13 (e) and inserting in its place the following catchline:

(e) Noise Pollution Prohibited

12. 20-13 (h) *Permits for exemptions from this ordinance and for extensions of time to comply with this ordinance.* Delete the last sentence of paragraph (h)(1) and insert in its place the following language:

“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.”

13. 20-13 (h) *Permits for exemptions from this ordinance and for extensions of time to comply with this ordinance.* Insert after the last sentence of paragraph (h)(2) the following language:

“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.”

14. 20-13 (j) *Penalties.* Delete the word “ordinance” and insert in its place the word “Section.”

15. Insert after paragraph (j) a new paragraph (k) as follows, and renumber existing paragraph (k) *Severability* to (l):

(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).

BE IT FURTHER ENACTED:

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

Section 20-13 Noise Control

() Any Offense\$50.00

Approved as to legal form and character:

DANIEL M. FUNK
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted

EXECUTIVE DEPARTMENT
Approved:

(SGD) DAVID A. OLSON
City Clerk

(SGD) DAVID B. COHEN
Mayor

ARTICLE II. NOISE

Sec. 20-13. Noise control.

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

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

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

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

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

Construction and demolition: Any excavation, 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.

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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 8:00 a.m. and 7:00 p.m. on Saturdays;

(C) Generation of any noise from construction and demolition activity is prohibited at any hour on Sundays and legal holidays as established in Section 2-26 of these revised ordinances, except by permit issued in accordance with subsection (h)(1).

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

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

(5) Between the hours of midnight and 6:00 a.m. deliveries and pick-ups for commercial or business purposes are prohibited within 300 feet of any dwelling within a residential zone excepting deliveries to such dwellings, deliveries of gasoline to gasoline stations, deliveries or pick-ups at state or federal governmental offices and any other commercial or business delivery

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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.

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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: (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

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or pick-up operation that does not increase noise levels 5dB(A) or more above background noise level. For purposes of this subsection, "deliveries" and "pick-ups" shall include the loading and unloading of a vehicle.

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

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

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(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

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(1) Vehicular sources.

Maximum noise level dB(A) permitted

		Stationary <u>or</u> Moving
Vehicle Class		
All vehicles over 10,000 lbs. GVW or GCWR	86	
All motorcycles	82	
Automobiles and light trucks	75	

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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.

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(2) Construction equipment.

Maximum noise level dB(A) permitted

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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 ½ 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

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

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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.

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(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).

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(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.

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(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.

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

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

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

(3) All noise level measurements made pursuant to 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.

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(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.

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(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.

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(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).

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(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)

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

Secs. 20-14—20-19. Reserved.

BOARD OF ALDERMEN

*City of Newton
Massachusetts*

Interoffice Correspondence

Date: 04-May-2008
To: Board of Aldermen
CC: Karyn Dean, P&S Committee Clerk
Marie Lawlor Assistant City Clerk
From: Ald. Marcia Johnson
Subject: Responses to Alderman Lennon's Questions Dated 23-April-2008

The majority of the revisions to this ordinance were a result of an informal working group consisting of the following individuals:

- John Lojek Commissioner Inspectional Services
- Eddie Aucoin Lieutenant, NPD
- Marie Lawlor Assistant City Solicitor
- Brooke Lipsitt Former Alderman
- George Mansfield Alderman
- Ted Hess-Mahan Alderman
- Susan Albright Alderman and Co-Sponsor

Part I Sheet titled, "Summary of Noise Ordinances Policy Differences:"

1) Disturbing the Peace - What is the definition of "background noise/level?" How can we measure dBA above that if that is not defined itself?

Background noise level is in our current ordinance and is not defined; however you have raised a good point. After consulting with Marie Lawlor here is recommended text:

***Background Noise:* The composite of noise from all sources near and far in a given environment or location, exclusive of occasional and transient intrusive noise sources and of the particular noise source or sources to be measured. Background noise shall be averaged over a period of at least fifteen (15) minutes at a location and time of day comparable to that during which the measurement is taken of the particular noise source being measured. Also known as "ambient noise."**

2) Noise Levels - How did you make the determination(s) of the proper (proposed) levels of dBA for equipment, HVAC's, etc? I assume from your previous email I need to speak with Ed Aucoin & Marie Lawlor?

This has been a process over a few years of examining existing ordinances in New England and other parts of the United States. We also consulted with OSHA and industry standards. Both Eddie Aucoin and John Lojek participated in the discussions and agreed that these were fair.

3) Construction - I feel that 11am is too late to start, especially on Saturdays. I know that there was an issue of equity regarding this but my experience has been that the majority of construction companies I speak with have their guys work 1/2 days on Saturday, usually until 12. They don't (and won't) work Sundays. I can't support this part of the ordinance.

This portion of the ordinance was not part of the working group discussions. This was proposed by Ald. Parker and supported by P&S. It is correct to state that this is an equity issue regarding noise on Saturdays and Sundays.

Alderman Merrill and Baker have proposed an amendment to return the hours to where they are in the current version of the ordinance.

4) Alternative Measurement Procedures - Mentions that it will be conducted in accordance with "established engineering procedures." By whom? If this ordinance is enforced by the police, who will be making this "engineering" determination?

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.

This is wording that is in the current version of the ordinance being used by the NPD and there have been no issues with it and the working group made no changes..

Questions from the Red-Line version of the draft ordinance:

Overall, one issue I am concerned with is the annual Carnival at Pellegrini Park. I have docketed a separate docket item to increase the time allowed for the music to play each night. As the ordinance currently stands, I believe musical performances need to end at 9pm and it was even stricter on Sundays. In meeting with Dan and Ouida, it wasn't as simple as just changing the time from 9 to 10. There were other issues that needed to be addressed. If the changes within this draft successfully address that, I can hopefully get rid of the other docket item.

1) Section C (3) - Would the carnival be considered a "program or activity supervised by the parks & recreation department?" They issue the permit each year.

Section H (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..

Since the Carnival would not be a “program or activity supervised by the parks & recreation department?” Section H (1) delegates to the Mayor the authority to grant a permit to override this ordinance. I see no problem here as the Carnival is an established and well respected event in the City.

As an example The July 4th celebration which is sponsored by the City would meet this criterion.

2) Section F (2) (b) - Can't support 11am. Feel the way it is now is ok.

This portion of the ordinance was not part of the working group discussions. This was proposed by Ald. Parker and supported by P&S. It is correct to state that this is an equity issue regarding noise on Saturdays and Sundays.

Alderman Merrill and Baker have proposed an amendment to return the hours to where they are in the current version of the ordinance.

3) Section F (7) - If I read this correctly, this would give the carnival the ability to have their concerts on Wed - Sun until 11pm. The only night it goes later than that is usually Sunday. During the week, they have contracts with performers from 7pm to 10pm.

Section H (1) delegates to the Mayor the authority to grant a permit to override this ordinance. I see no problem here as the Carnival is an established and well respected event in the City.

4) Section G (1 through 4) - Again, how were the proposed dBA's derived? What input was solicited from end-users?

This has been a process over a few years of examining existing ordinances in New England and other parts of the United States. We also consulted with OSHA and industry standards. Both Eddie Aucoin and John Lojek participated in the discussions and agreed that these were fair. P&S had a public meeting and as I recall, the majority of the concern was over the banning of the leaf-blowers and that the feedback was to regulate this equipment by noise level, which we are doing now.

5) Section G (5) - Concerned about this section. What happens if you live in a densely populated area and air conditioning units are very close to neighboring lot lines? How is this addressed? Not even central air units but window units are sometimes loud.

The current ordinance applies to any noise which exceeds the level outlined in our definition of Noise Pollution.

***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.**

The working group, by adding HVAC, has clarified not added anything.

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) Section G (6) - Tonal Sound Corrections - Sounds like if you emit noise within 5 dBA of the maximum it is a problem ("lower than as specified"). I am not sure I understand. I relate it to driving within 5 mph of a speed limit. If the limit is 30mph, I can still drive 30mph. If the limit is 30mph, why should I only be able to drive 25mph? Please clarify.

This is the wording in the current ordinance, which has not been problematic.

7) Section G (7) - Alternative Measurement Procedures - Concerns mentioned above.

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.

This is wording that is in the current version of the ordinance being used by the NPD and there have been no issues with it and the working group made no changes

8) Section G (8) - Do we have these meters? Will we be purchasing? How many & what is the cost? I only ask because of the issue regarding the city automated backup server. I would assume it would not be as much but the backup server is dependent on the override which is unfortunate because if our financial system is compromised, we will be crippled for weeks without help.

Yes, we have one or two meters that the NPD uses.