

Chapter 20

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ARTICLE I.

SMOKING, TOBACCO PRODUCTS AND ALCOHOLIC BEVERAGES

Sec. 20-1. Distribution of tobacco products and nicotine delivery products.

No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products or nicotine delivery products for commercial purposes, or any agent or employee of any such person, shall in the course of such business distribute any cigarettes or other tobacco or smoking products or nicotine delivery products free to any person on any public street or sidewalk, or in any public park or playground, or any other public ground, or in any public building.

Any person who violates the provisions of this section shall be punished by a fine of not less than twenty (\$20.00) nor more than fifty (\$50.00) dollars for each violation. Every hour or part thereof in which a person engages in the conduct prohibited by this section shall constitute a single and separate violation. (Ord. No. R-224, 3-1-82; Rev. Ords. 1995, § 20-18; Ord. No. X-59, 10-7-03)

Sec. 20-2. Sale of tobacco products and nicotine delivery products.

(a) *Declaration of findings and policy:* Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and, whereas at least one-half of all smokers begin smoking before the age of twenty-one (21); and, whereas an estimated three thousand (3,000) minors begin smoking every day in the United States; and, whereas nicotine in tobacco has been found by the Surgeon General to be a powerfully addictive drug; and, whereas despite state laws prohibiting the sale of tobacco

***Cross reference**—General penalty for code violations, § 17-21; police, Ch. 24

products to minors, access by minors to tobacco products is a major problem; and, whereas a city ordinance to restrict the access of minors to tobacco products is in the interest of public health; now, therefore, it is the policy of the City of Newton to discourage minors from experimenting with tobacco and nicotine and to make tobacco products and nicotine delivery products less accessible to minors.

(b) *Definitions:* For the purposes of this section, the following words shall have the meanings respectively ascribed to them by this section:

Blunt wrap: any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Characterizing flavor: a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings that do not contribute to the distinguishable taste or aroma or because of the provision of ingredient information.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under M.G.L. chapter 64C, section 1.

City: City of Newton.

Commissioner: The commissioner of health and human services of the City of Newton.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture or packing of the tobacco product. Such term shall include a smoke constituent.

Distinguishable: Perceivable by either the sense of smell or taste.

E-cigarette: Any electronic nicotine delivery product composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of solid nicotine or any liquid, with or without nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes, or under any other product name.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public

statements concerning such tobacco product, that such tobacco produce has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

Health care provider: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services or employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112. Health care provider includes hospitals, clinics, health centers, pharmacies, drug stores and doctor and dentist offices.

Nicotine delivery product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Non-residential roll-your-own (RYO) machine: a mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not non-residential RYO machines.

Retail tobacco store or retail nicotine delivery product store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and tobacco paraphernalia, or nicotine delivery products, in which the entry of persons under the age of twenty-one (21) is prohibited at all times, and maintains valid tobacco and nicotine delivery product sales permit.

Self-service display: Any display of tobacco products or nicotine delivery products which is so located such that said products are accessible to customers without assistance from an employee or store personnel.

Smoke constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Minor: Any individual who is under the age of twenty-one (21).

Person: A person, employer, employee, retail store manager or owner, or the owner or operator of any establishment engaged in the sale of tobacco products.

Vending machine: Any automated or mechanical self-service device which, upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product or nicotine delivery product.

Tobacco products: Cigarettes, cigars, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

(c) *Sale or gift to minors prohibited:*

(1) No person shall sell tobacco products or nicotine delivery products, or permit the same to be sold to a minor, or, not being the minor's parent or legal guardian, give tobacco products or nicotine delivery products to a minor.

(2) *Required signage and notice of prohibition:*

(a) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of

Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Commissioner. The notice shall be at least forty-eight (48) square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

- (b) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Commissioner that discloses current referral information about smoking cessation.
- (c) The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating “The sale of nicotine delivery products to a minor under 21 years of age is prohibited.” The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notices shall be posted conspicuously in such a manner that they may be readily seen by a person standing at or approaching the cash register. The signs will be provided by the Commissioner.
- (3) *Identification:* Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is twenty-one (21) years old or older. Verification is required for any person under the age of 27.

(d) *Tobacco sales and nicotine delivery product permit:*

- (1) No person shall sell or otherwise distribute tobacco or nicotine delivery products within the city without first obtaining a tobacco or nicotine delivery product sales permit issued by the commissioner. Only owners of establishments with a permanent, non-mobile location in Newton are eligible to apply for a permit and sell tobacco and/or nicotine delivery products at the specified location in Newton.
- (2) As part of the tobacco and nicotine delivery product sales permit application process, the applicant will be provided with a copy of this section. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco or nicotine delivery product sales regarding both state laws regarding the sale of tobacco to minors and this regulation.
- (3) Each applicant selling or distributing tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco and nicotine delivery product sales permit can be issued.
- (4) The fee for an initial tobacco and nicotine delivery product sales permit shall be determined by the commissioner based on the cost of administering the permit process. All such permits shall be renewed annually. The annual renewal fee shall be in an amount determined by the commissioner based upon the actual cost of administering the permit renewal process.
- (5) A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery product.
- (6) Each tobacco and nicotine delivery product sales permit shall be displayed at the retail establishment in a conspicuous place.

- (7) No tobacco and nicotine delivery product sales permit holder shall allow any employee to sell cigarettes, other tobacco products, or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco to minors and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.”
- (8) A tobacco and nicotine delivery product sales permit is non-transferable. A new owner of an establishment that sells tobacco or nicotine delivery products must apply for a new tobacco and nicotine delivery product sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.
- (9) Issuance of a tobacco and nicotine delivery product sales permit shall be conditioned on an applicant’s consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.
- (10) A tobacco and nicotine delivery product sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

(e) *Tobacco products or nicotine delivery products vending machines:*

No person shall distribute or sell tobacco products or nicotine delivery products by the use of a vending machine.

(f) *Self service displays:*

No person shall sell or offer for sale tobacco products or nicotine delivery products by means of a self service display.

(g) *Ban on free distribution, on single cigarettes, and on non-residential roll-your-own machines:*

No person shall distribute, or cause to be distributed, any free samples of tobacco products or nicotine delivery products. No person may sell or cause to be sold or distribute or cause to be distributed, any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes, or any non-residential roll-your-own machine.

(h) *Prohibition of the sale of tobacco products or nicotine delivery products by health care providers:*

No health care provider located in the City of Newton shall sell tobacco products or nicotine delivery products or cause tobacco products or nicotine delivery products to be sold. No retail establishment that operates, maintains or employs a health care provider within it, such as a pharmacy or drug store, shall sell tobacco products or nicotine delivery products or cause tobacco products or nicotine delivery products to be sold.

(i) *Cigar sales regulated:*

No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more. This section shall not apply to the sale or distribution of any cigar having a retail price of two dollars and fifty cents (\$2.50) or more; or to a person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Newton; or to a retail tobacco or retail nicotine delivery store.

(j) *Sale of flavored tobacco or nicotine delivery products prohibited:*

No retailer, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale any flavored tobacco or nicotine delivery product to a consumer. This provision shall not apply to a retail tobacco store or retail nicotine delivery product store.

(k) *Prohibition of the sale of blunt wraps:*

No retailer, retail establishment, or other individual or entity shall sell or distribute or cause to be sold or distributed or offer for sale blunt wraps.”

(l) *Violations and penalties:*

- (1) A person who violates the provisions of subsection (d)(1) of this section shall be subject to a fine of three hundred dollars (\$300.00) for each violation. Every day in which a person engages in conduct prohibited by subsection (d)(1) of this section shall constitute a single and separate violation.
- (2) A violation of any provision of this section other than subsection (d)(1) shall be subject to:
 - (a) In the case of a first violation, a fine of one hundred dollars (\$100.00).
 - (b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the tobacco and nicotine delivery product sales permit shall be suspended for seven (7) consecutive business days.
 - (c) In the case of a third violation within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the tobacco and nicotine delivery product sales permit shall be suspended for thirty (30) consecutive business days.
 - (d) In the case of four or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the tobacco and nicotine delivery product sales permit shall be revoked for sixty (60) consecutive business days or for the remainder of the permit term, whichever is longer.
 - (e) The tobacco and nicotine delivery product sales permit holder shall be assessed a fine according to the schedule stated in this subsection for each violation of any provision of this section, other than subsection (d)(1), occurring on the premises governed by the permit. In the event of a sale or free distribution of a tobacco product or nicotine delivery product to a minor made by an employee of the permit holder, such employee shall also be subject to a fine in accordance with the schedule stated in this paragraph.
 - (f) Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco sales and nicotine delivery product permit for thirty (30) consecutive business days.
- (3) The commissioner shall suspend or revoke a tobacco and nicotine delivery product sales permit granted pursuant to this section upon determination that a permit holder has committed three (3) violations of this section within three (3) years, calculated from the date of the first offense. The commissioner shall provide notice to the permit holder of the intent to suspend or revoke a tobacco and nicotine delivery product sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the commissioner’s decision and the reasons therefore, in writing. All tobacco and nicotine delivery products shall be removed from

the premises upon suspension or revocation of the tobacco and nicotine delivery product sales permit. Failure to remove shall constitute a separate violation of this section. A permit holder whose permit has been revoked may not apply for a new permit prior to the expiration of one (1) calendar year following the date of revocation.

(m) *Severability*: The provisions of this section are severable. If any provision of this section or its application to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application. (Ord. No. T-241, 10-21-91; Ord. No. T-293, 8-9-93; Ord. No. T-295, 9-7-93; Rev. Ords. 1995, § 20-20-18A; Ord. No. X-59, 10-7-03; Ord. No. X-175, 05-26-05; Ord. No. Z-55, 11-06-09; Ord. No. Z-57, 11-16-09; Rev. Ords. 2007; Ord. A-42, 06-16-14)

Sec. 20-3 – 20-4. Reserved.

Sec. 20-5. Public consumption of alcoholic beverages.

(a) No person shall drink, consume or possess an open bottle, can, or container of any intoxicating liquor or alcoholic beverage as defined in General Laws, chapter 138, section 1, while in or upon public parks, playgrounds, recreation or conservation areas, public buildings, public parking lots and public ways, private parking lots and private ways to which the public has access.

(b) The prohibition of subsection (a) of this section shall apply in, on or outside of an automobile or other motor vehicle but shall not apply in or upon:

- (1) any private parking lot and private way to which the public has access where prior consent has been obtained from the owner or authorized person in control thereof, and provided further that no disturbance or annoyance is created thereby;
- (2) any public property specified in subsection (a) where prior express consent by way of a permit has been issued from the chief of police or his duly authorized agent in accordance with the provisions of section 17-5 of the Revised Ordinances; and provided further that no disturbance or annoyance is created thereby.

(c) Whoever remains in, on, or upon any premises described in this section 20-5 herein in willful violation may be arrested without a warrant, in accordance with chapter 272, section 59 of the General Laws by an officer authorized to serve criminal process in the place where the offense is committed, if such person is unknown to such officer.

(d) All alcoholic beverages or intoxicating liquors being used in violation of this section shall be seized and safely stored until final adjudication of the charge against the person or persons affected, at which time they shall be returned to the person or persons entitled to lawful possession unless, as a result of said adjudication, such alcoholic beverages or intoxicating liquors are ordered confiscated or seized to be disposed of according to the General Laws or as the court directs.

(e) Anyone found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars (\$50.00) for each such violation. (Rev. Ords. 1973, § 14-17; Ord. No. 13, 9-3-74; Rev. Ords. 1995, § 20-17)

Cross reference—Permits for the public consumption of alcoholic beverages, § 17-5

Sec. 20-6. Prohibition of alcoholic beverage and tobacco product or nicotine delivery product advertising or promotion in or on city buildings, facilities, land, and in or on public transportation vehicles.

(a) *Definitions*: For the purposes of this section, the following words shall have the meanings respectively ascribed to them by this paragraph:

Alcoholic beverage advertisement: Any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of alcoholic beverage, a trademark of an alcoholic beverage or a trade name associated exclusively with an alcoholic beverage; or any sign which is used for the purpose or effect of promoting the use or sale of an alcoholic beverage through such means as, but not limited to, the identification of a brand of an alcoholic beverage, a trademark of an alcoholic beverage or a trade name associated exclusively with an alcoholic beverage.

Nicotine delivery product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

Person: Any natural person, firm, partnership, association, corporation, limited liability corporation, company or organization of any kind, or other legal entity.

Public place: Any building, facility or other structure owned or operated by the city including school buildings and grounds or any land or property owned or operated by the city.

Public transportation vehicle: Buses, taxis, and other means of transportation the operation of which is subject to licensing or other grant of permission by the city pursuant to these revised ordinances or the general laws, including bus shelters and indoor platforms by which such means of transportation may be accessed.

Sign: A permanent or temporary structure, device, letter, word, two (2) or three (3) dimensional model, insignia, banner, streamer, display, emblem, or representation which is designed to attract attention.

Tobacco product: A cigarette, cigar, chewing tobacco, pipe tobacco, snuff or tobacco in any of its forms.

Tobacco product advertisement: Any written word, picture, logo, symbol, motto, selling message, poster, placard, sign, photograph, device, graphic display or visual image of any kind, recognizable color or pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, those used for any brand of tobacco or nicotine delivery product, a trademark of a tobacco or nicotine delivery product or a trade name associated exclusively with a tobacco or nicotine delivery product; or any sign which is used for the purpose or effect of promoting the use or sale of a tobacco or nicotine delivery product through such means as, but not limited to, the identification of a brand of a tobacco or nicotine delivery product, a trademark of a tobacco or nicotine delivery product or a trade name associated exclusively with a tobacco or nicotine delivery product.

(b) Alcohol and tobacco or nicotine delivery products, advertising and promotion prohibited: No person shall place, caused to be placed, maintain or cause to be maintained a sign containing an alcoholic beverage advertisement or a sign containing a tobacco or nicotine delivery product advertisement in or on a public place or in or on a public transportation vehicle. This section is in addition to and not in substitution for the provisions of chapter 30 of these revised ordinances.

(c) Removal:

- (1) The city department or agency having control over a public place where a sign is posted in violation of subsection (b) is hereby authorized to remove such sign, provided that the city department or agency shall, as soon as reasonably possible, provide notice of such removal to the owner of the sign, if the name and address of the owner is readily ascertainable from the sign or if the city department or agency has received notice as to the name and address of the owner of the sign.

- (2) A sign so removed shall be stored for up to thirty (30) days during which time the sign owner or someone designated by the sign owner may reclaim the sign. If a sign removed pursuant to subsection (c)(1) is not reclaimed within thirty (30) days of removal, then the sign shall be declared to be unclaimed surplus property in the possession of the city department or agency which removed such sign and such sign shall be disposed of by the purchasing agent of the city pursuant to section 2-186(b)(7) of these revised ordinances.
- (3) In the case of a public transportation vehicle, the owner or operator of such vehicle shall remove a sign found to be in violation of subsection (b) within 24 hours of a request by the city to remove such sign. Failure to remove a sign within such timeframe shall be cause for revocation of any license or permission granted by the city in connection with the operation of such public transportation vehicle.

(d) Nuisance, abatement: A sign posted in violation of subsection (b) shall constitute a public nuisance and the city shall have the authority to abate such nuisance pursuant to the provisions of subsection (c) above. (Rev. Ords. 1995, Ord. V-184, 6-29-98; Ord. A-42, 06-16-14)

Editor's note—Ordinance V-184 contained a detailed Declaration of legislative findings and intent, which is on file in the records of the city council.

Sec. 20-7: Smoking prohibited – Sidewalks and Other Public Property

(a) No person shall smoke, possess or carry a lighted or smoldering cigarette, cigar, or pipe of any kind or any other smoking article at the following locations:

- (1) Upon the sidewalk at:

Albemarle Road, East side of easterly roadway from its intersection with Watertown Street northerly 299 feet.

Edinboro Street, West side from its intersection with Watertown Street northerly 257 feet.

Watertown Street, North side from its intersection with Albemarle Road (easterly roadway) easterly to its intersection with Edinboro Street;

- (2) Upon the sidewalk or other public property within a nine hundred (900) foot perimeter of the property line of Newton North High School grounds.

(b) The Commissioner of Public Works shall erect and maintain signs indicating the locations designated for the smoking prohibition. Signs shall be erected so as to adequately notify the public of such prohibition and the areas affected thereby.

(c) The Commissioner of Health and Human Services and/or his or her designee(s) shall enforce the provisions of this ordinance. The Commissioner or his or her designee(s) shall, for an initial violation of this section, and may for any subsequent violation, afford the violator the option of enrolling in a smoking cessation/education program approved by the Commissioner and/or his or her designee(s). Proof of completion of a smoking cessation/education program approved by the Commissioner or his or her designee shall serve in lieu of the civil fines set forth in Section 17-21. (Rev. Ords. 2001, Ord. X-14, 4-1-02; Ord. No. Z-17, 12-17-07)

Sec. 20-8 E-cigarette usage – locations prohibited

The use of e-cigarettes as defined in Sec. 20-2(b) is prohibited wherever smoking is prohibited under M.G.L Chapter 270, Section 22 (the Smoke-Free Workplace Law”), and in all locations listed in Section 20-7 of this ordinance. The Commissioner of Health and Human services and/or his or her designee(s) shall enforce this section in accordance with Sec. 20-7(c). (Rev. Ords. 2012, Ord. A-42, 06-16-14)

Secs. 20-9—Sec. 20-12. Reserved.

ARTICLE II. NOISE

Sec. 20-13. Noise control.

(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, recreation and culture 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, 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.

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 10dB(A) or more above background noise level, except that if the noise source produces a tonal sound, an increase at 5dB(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.

(e) *Noise Pollution prohibited.*

- (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 subsection (e) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

(f) *Time Restrictions.*

- (1) Notwithstanding the provisions of subsection (e) and subject to the maximum noise levels listed in subsection (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 subsection (e) and subject to the maximum noise levels listed in subsection (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 (i).

(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 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.

(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 purposes:

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 and demolition.*

The cumulative noise level of all construction and demolition on one site at any one time shall not exceed 90dB(A). No individual piece of equipment shall exceed a maximum noise level of 90 dB(A). If noise barriers are used that effectively shield nearby areas from a condition of noise pollution, the following devices shall be exempt from the maximum noise level limitations: jackhammers; pavement breakers; pile drivers; and rock drills.

Maximum noise level dB(A) permitted:

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

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*

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, 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.

(4) *Tonal Sound Corrections.* When a tonal sound is emitted by a noise source specified in subsections (g)(1), (g)(2) and (g)(3) herein, the limit on maximum noise levels shall be 5dB(A) lower than as specified in subsections (g)(1), (g)(2) and (g)(3).

(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 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) *Alternative Measurement Procedures.* If it is not possible to make a good noise level measurement at the distance specified in subsections (g)(1), (g)(2) and (g)(3), 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.
- (7) All noise-level measurements made pursuant to subsection (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) *Restrictions on use of leaf blowers.*

Notwithstanding the provisions of sections 20-13 (f) and (g), no property owner or property manager or other person in control of a property shall authorize or permit the operation of leaf blowers on property under their control; no contractor or commercial landscaper, including a City contractor or employee, shall use or operate or authorize or permit any agent or employee to use or operate a leaf blower; nor shall any person use or operate a leaf blower within the City unless they do so in compliance with the provisions of this section. The following definitions shall apply to this section:

Leaf blower: any portable motorized device, whether carried or pushed, whether powered by gasoline or other fuel, electricity or battery, used in any landscape or property construction or maintenance activity, for the purpose of blowing, dispersing, redistributing, or removing dust, dirt, leaves, grass or plant clippings, litter or other debris.

Commercial leaf blower operator: any individual, entity or organization, including a contractor or commercial landscaper, that receives compensation for services that include operation of a leaf blower.

- (1) *Summer Ban.* No leaf blower may be operated from Memorial Day through Labor Day in each year, except that one 65 dB(A) electric or battery powered leaf blower per lot may be used during this period subject to the permitted hours of use specified in Subsection (2) below. At all other times leaf blowers may be operated subject to the following provisions:
- (2) *Permitted hours of use.* Leaf blowers may be operated only during the following times:

Monday - Friday: 7:00 a.m. - 5:00 p.m., except that the City of Newton, through its parks, recreation and culture department, shall be allowed to use leaf blowers prior to 7:00 a.m. for the sole purpose of maintaining city village centers.

Saturday: 8:00 a.m. - 5:00 p.m.

Sundays and legal holidays: prohibited except for operation by a resident of the property on which the leaf blower is operated between 9:30 a.m. and 5:00 p.m.; and except for operation of leaf blowers on contiguous lots under single ownership that total a minimum of thirty acres used for institutional or recreational purposes between 9:30 a.m. and 12:00 p.m.

- (3) Only leaf blowers meeting the following criteria are permitted for use:
 - A. Leaf blowers must be manufactured after January 1, 2005 for EPA Class 4 engines and after January 1, 2008 for EPA Class 5 engines;
 - B. Leaf blowers must bear an affixed manufacturer's label indicating the model number of the leaf blower;
 - C. Leaf blowers must bear an affixed manufacturer's label documenting a noise rating of 65 dB(A) or less; and
 - D. Leaf blowers may only be used with any muffler, full extension tube and sound attenuating devices supplied by the manufacturer of the leaf blower. Non-factory modifications are not permitted.
- (4) During times of emergency caused by a storm or other special circumstance, the Mayor or his designee may temporarily suspend application of all or a portion of this section for purposes of cleaning up from such storm or other special circumstance.
- (5) The provisions of section 20-13 (i) shall not apply to leaf blower operation.
- (6) Any violation of the restrictions contained in sections 20-13 (h)(1) through (h)(6) above shall be subject to the penalties set forth in sections 20-13 (k) and (m) below, provided that the first offense by any person subject to this section shall be subject to a warning only, and provided further that a violation committed by a commercial operator holding a valid permit and in good standing on the public list provided for in section (7) A, shall be enforced against the commercial operator only, and not against the property owner, manager or person in control of the property upon which the violation has occurred.
- (7) Commercial Leaf Blower Operators - permit required.
 - A. No commercial leaf blower operator may operate a leaf blower or permit or authorize an agent or employee to operate a leaf blower in the City of Newton without an annual permit from the commissioner of inspectional services, who shall provide application forms; who may establish rules governing the display of permits on permittee's vehicles; and who shall maintain a public list of commercial leaf blower operators who hold a valid permit under this section. The commissioner may set a reasonable fee for such permit. Such application form shall require the name and telephone number of a contact and shall require the applicant to certify under pains

and penalties of perjury that they have read and understand this ordinance pertaining to leaf blower restrictions, and that they will inform all employees of the restrictions. If a violation of any leaf blower restriction under this ordinance is committed by an employee or agent of and while performing work for said commercial leaf blower operator, the commercial leaf blower operator shall be responsible for the violation and the employee or agent shall not be individually liable.

- B. A commercial leaf blower operator shall ensure that its name, address, telephone number and its commercial leaf blower permit number are clearly visible on any vehicle it uses to conduct business in Newton.
- C. In addition to the penalties set forth in sections (k) and (m) below, the permit of any commercial leaf blower operator who has received two or more notices of violation of leaf blower restrictions by it or its employees or agents in a 12-month period shall be suspended for a period of sixty days. The permit of any commercial leaf blower operator whose permit has been suspended two times shall be revoked, and the operator shall be ineligible for a permit for a period of one year. The operator's name shall be removed from the public list during any period of suspension or revocation. The penalty for operating a leaf blower without a commercial operator permit shall be \$300.00.
- D. The commissioner of inspectional services may promulgate rules and regulations to implement this section.

(i) *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. Copies of all such permits shall be filed with the clerk of the city council promptly after issuance. Promptly after issuance, copies of all such permits shall be filed with the clerk of the city council and to each ward city councilor for the affected ward.
- (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.

(j) *Judicial Review.* Any person aggrieved by the grant or denial of a permit pursuant to subsection (i)(1) or an extension of time pursuant to subsection (i)(2), or a suspension or revocation of a commercial leaf blower operator permit pursuant to subsection (h)(7) may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

(k) *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 three hundred dollars (\$300.00). Each day that such violation continues shall be considered to be a separate offense.

(l) *Enforcement.* The Newton Police Department and the Inspectional Services Department shall be responsible for enforcement of this ordinance. Each department shall document the disposition of all complaints by written report available to the public. The written report shall clearly indicate whether the complaint resulted in a warning or fine. If a warning or fine was not issued for a complaint, the responding city employee shall clearly indicate the reason.

(m) *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 17-22 and 17-23 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 17-23(c) and 17-23(d).

(n) In the event the person in violation of section 20-13(h) pertaining to leaf blower use is a commercial leaf blower operator, the property owner shall be notified of the violation and of any warning or other enforcement issued to the operator.

(o) *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; Ord. Z-32, 7-14-08; Ord. No. Z-78, 02-22-11; Ord. No. Z-104, 04-02-12; Ord. No. A-100, 01-17-17; Ord. No. B-53, 03-02-20)

Cross reference—Sounding warning devices on motor vehicles, § 19-72; noise by hawkers and peddlers, § 20-75.

Secs. 20-14—20-22. Reserved.

ARTICLE III. LIGHT TRESPASS

Sec. 20-23. Definitions.

For purposes of sections 20-23 through 20-28, the following words and phrases shall have the meanings respectively ascribed to them as follows:

Direct Light: Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a light source.

Lumen: A unit of light output as that term is defined by international standards. One footcandle is one lumen per square foot. For the purposes of sections 20-23 through 20-27, the lumen-output rating shall be the manufacturer's rating of the light source.

Light Source : A lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and to connect the lamps to the power supply. (Ord. No. X-142, 03-21-05)

Sec. 20-24. Light pollution prohibited.

(a) No person shall install or maintain a light source which emits light unless such light source conforms to each of the following requirements:

- (1) it shall emit a steady and constant light and shall not emit a flashing or irregular light;
- (2) it shall shine downward and not emit any direct light above a horizontal plane through the lowest direct-light-emitting part of such light source.

(b) This section shall not apply to the following light sources:

- (1) light sources which are rated at a total that does not exceed 100 lumens; and
- (2) light sources which are located entirely within an enclosed structure, provided however, that a structure with a transparent or translucent roof, dome or cupola shall not constitute an enclosed structure for purposes of this subsection; and
- (3) light sources which are required pursuant to state or federal law; and
- (4) light sources which are used to illuminate the flag of the United States of America or other flag, or an architectural feature such as a cupola or steeple; and
- (5) light sources installed or maintained by the City or a utility to illuminate a public or private way; and
- (6) internally illuminated signs which emit light only from a vertical surface, and
- (7) festive or holiday light sources which are illuminated on a seasonal basis.

(c) Each installation or maintenance of a light source that does not conform to the requirements of this section shall constitute a separate violation of this section. (Ord. No. X-142, 03-21-05)

Sec. 20-25. Light trespass prohibited.

(a) No person shall install or maintain a light source or light sources which emit(s) light which falls outside the boundaries of the parcel of land upon which the light source(s) is sited, unless 1) such person has the permission of the owner or person in control of the parcel of land upon which the light falls or 2) the illuminance of light measured at any point which is located five or more feet outside of the boundary of the parcel of land upon which the light source is located does not exceed .35 horizontal or .35 vertical footcandles after astronomical twilight, provided however, that during the three-year period immediately following the effective date of this section, the standard shall be .5 horizontal or .5 vertical footcandles after astronomical twilight.

(b) The prohibition against maintaining a light source as set forth in subsection (a) shall not apply between the hours of 6:00 a.m. and 9:30 p.m.

(c) This section shall not apply to the following light sources:

- (1) light sources installed or maintained by the City or a utility to illuminate a public or private way; and
- (2) light sources which emit light which falls upon the abutting public way and not upon any other property outside the boundaries of the parcel of land upon which the light source is sited; and
- (3) light sources which are required pursuant to state or federal law.

(d) Each instance of emitting light upon a parcel of land in violation of this section shall constitute a separate violation of this section.

Sec. 20-26. Waiver.

(a) Upon application by the owner or tenant of a property, the planning and development board may grant a Waiver to allow an exception to the prohibitions contained in section 20-24 and/or section 20-25.

(b) An applicant for a waiver shall submit such information as the planning and development board reasonably requires, including (i) a diagram or plan illustrating the location and extent of the light trespass and/or light pollution; and (ii) evidence of the measures taken by the applicant to abate the light trespass and/or light pollution.

(c) A Waiver may be granted only if the planning and development board determines that literal enforcement of the section would cause substantial hardship, financial or otherwise, to the applicant or community, taking into account: (i) the extent of light pollution and/or light trespass caused by granting the Waiver; and (ii) whether reasonable efforts have been made to abate the light pollution and/or light trespass.

(d) The planning and development board shall determine the term for each waiver granted hereunder and shall limit each waiver to the days and times that are necessary to achieve the purpose for which the waiver is granted. To the maximum extent possible, consistent with the relief granted, each waiver shall be limited both as to term and the geographic area to which it applies. Such waivers may include other reasonable conditions, as the planning and development board deems appropriate and consistent with the spirit and intent of the section for which the exception is granted.

(e) Except as provided in subsection (f), the planning and development board shall give written notice of such application (i) to the owners of the estates which abut the site for which a waiver is sought and ii) in the case of an application for a waiver from the provisions of section 20-25, to the owners of the estates upon which the light falls or will fall. For purposes of this subsection, the estate(s) located on the opposite side of a public or private way shall be considered abutting. The planning and development board may not grant a waiver until fourteen (14) days following the giving of such notice, during which time such owners may submit comments for the planning and development board's consideration in evaluating the application.

(f) Applications for waivers with terms of not more than thirty (30) days shall not be subject to the notice and comment period set out in subsection (e).

(g) Upon granting a Waiver, the planning and development board shall promptly provide notice thereof to the owners of the estates which abut the site for which the waiver was granted. Such notice shall describe the nature and scope of the waiver, including its duration and conditions. (Ord. No. X-142, 03-21-05)

Sec. 20-27. Enforcement.

(a) City agencies that review applications for construction and alteration of properties covered by the standards set out in sections 20-24 and 20-25 shall inform applicants of such standards.

(b) Boards and commissions that review applications for licenses and permits which allow the conduct of business or other activities at stated locations shall take cognizance of the standards set out in sections 20-24 and 20-25 and shall incorporate them as part of their review of such applications where applicable, consistent with the jurisdiction of such board or commission, provided however that nothing contained in such standards shall restrict a board or commission from imposing more stringent standards. (Ord. No. X-142, 03-21-05)

Sec. 20-28. Transitional provisions.

(a) Light sources which are in place and in regular use as of the date of adoption of section 20-24 shall not be

subject to the provisions of such section until five years after the effective date hereof.

(b) Light sources which are in place and in regular use as of the date of adoption of section 20-25 shall not be subject to the provisions of such section until two years after the effective date hereof.

(c) Nothing in sections 20-24 and 20-25 shall require the removal or destruction of an existing light source which would be in violation of such section(s) if it were to be used to emit light, so long as such light source is turned off and does not emit light. (Ord. No. X-142, 03-21-05)

Secs. 20-29—20-49. Reserved.

ARTICLE IV. MISCELLANEOUS OFFENSES

Sec. 20-50. Defacing property.

No person shall make any indecent figures, or write any obscene words upon, or deface any fence, building, sidewalk, crosswalk or bridge. (Rev. Ords. 1973, § 14-1; Rev. Ords. 1995, § 20-1)

Sec. 20-51. Depositing of litter.

No person shall in any manner place or deposit or cause to be placed or deposited on any street or sidewalk, or on any park, playground or other public grounds, or upon any other premises, without the consent of the owner thereof, any noxious substance or liquid or any discarded articles or materials or any dirt, leaves, grass clippings, trimmings from trees or shrubs, wood chips, or other yard waste or any rubbish or litter of any kind except in containers set out for collection in accordance with the provisions of Chapter 11 of the Revised Ordinances. (Rev. Ords. 1973, § 14-2; Rev. Ords. 1995, § 20-2; Ord. No. A-96, 12-05-16)

Sec. 20-52. Disorderly behavior; annoying others.

No person shall behave himself in a rude or disorderly manner, nor use indecent, profane or insulting language in any street, public place or public building in the city, nor be or remain upon any doorstep, portico or other projection from any such building, or any church, meetinghouse, public hall, or entrance thereto, to the annoyance or disturbance of any person; nor shall any person engage in any game, sport or amusement in any street of the city whereby the free, safe and convenient use thereof by travelers thereon shall in any way be interrupted, or the occupants of adjoining estates unreasonably annoyed and disturbed. (Rev. Ords. 1973, § 14-3; Rev. Ords. 1995, § 20-3)

State law reference—Disturbing public meetings, G.L. c. 272, § 38, 40

Sec. 20-53. Reserved.

Sec. 20-54. Games of hazard or chance.

(a) No person shall expose in or upon any street or public grounds any table or device of any kind by or upon which any game of hazard or chance can be played.

(b) No person shall play any game of hazard or chance at any table or device in or upon any street or public grounds in the city. (Rev. Ords. 1973, § 14-5; Rev. Ords. 1995, § 20-5)

State law reference—Gaming generally, G.L. c. 137.

Sec. 20-55. Hours for gas stations.

(a) Gasoline stations in the city shall open no earlier than 7:00 a.m. and close no later than 10:00 p.m.

(b) When in its judgment the public convenience and welfare may be substantially served, the city council may, on petition in writing to it by the operator of a gasoline station and subject to such appropriate conditions and safeguards as the city council may impose, which may include provisions for yearly renewal and revocation at the pleasure of the city council, allow exceptions to the application of the hours imposed and established by this section.

(c) Upon written petition to it, the city council or committee thereof shall hold a hearing within a reasonable period of time on the petition for an extension of hours.

(d) During hours in which gasoline stations are closed for business, restrooms, including those having coin-operated devices, are to be locked so as to be inaccessible to the public.

(e) This section shall apply equally to all gasoline stations now or hereafter in existence. (Rev. Ords. 1973, § 14-6; Rev. Ords. 1995, § 20-6)

Cross reference—Permit fees for place of storing gasoline over 120 gallons, § 17-2

Sec. 20-56. Musical performers; regulations; license.

(a) No person shall sing or play or perform on any musical instrument in the streets or public places of the city, except in connection with a funeral, a military parade or a procession of a political, civic or charitable organization, for which a police escort is provided, unless licensed therefor by the city council of the city. Two (2) or more persons joining together to sing or perform on musical instruments in the streets or public places of the city will be considered a band, a collective license for which will be granted to one or more persons, and the membership of the band may be changed from time to time without additional license fee; provided that the number of members is not increased. The board may grant licenses to persons or bands to sing or play or perform on musical instruments in the streets and public places of the city and to solicit and receive compensation therefor from bystanders or the public, but no such licensed person or band shall perform as part of any procession, parade or assemblage in the streets or public places of the city, except as provided by this section.

(b) No musician or band shall perform in the streets or public places of the city before 9:00 a.m. or after 9:00 p.m., or on Sunday, except as a part of a funeral or military procession, or at a concert given by the city and then not within three hundred (300) feet of any place of worship while worship is being held therein, nor within three hundred (300) feet of any building any occupant of which notifies him or them to desist, or has notified the city council in writing that he objects to such performance.

(c) Every license provided in this section shall expire on the first day of May next succeeding its date. The license shall not be transferable, shall be revocable by the city council at its discretion, and may be suspended by the chief of police pending any charges to the board against the licensee. In case of revocation no portion of the license fee shall be refunded. (Rev. Ords. 1973, § 14-7; Rev. Ords. 1995, § 20-7)

Sec. 20-57. Nude swimming.

No person shall swim or bathe in a nude state in any of the waters within or surrounding the city so as to be exposed to the view of other persons in any street or house within the city. (Rev. Ords. 1973, § 14-8; Rev. Ords. 1995, § 20-8)

State law reference—Indecency generally, G.L. c. 272, § 53 et seq.

Sec. 20-58. Posting printed matter, etc.

No person shall paint or draw any words or figures, or post any written or printed matter upon the property of any

person without the consent of the owner or occupant thereof, nor upon any property of the city without the consent of the commissioner of public works. (Rev. Ords. 1973, § 14-9; Rev. Ords. 1995, § 20-9)

Sec. 20-59. Reserved.

Sec. 20-60. Trees, posts, ornaments, etc.; injuring, defacing, destroying.

No person shall injure, deface or destroy any guidepost or guide board, any lamppost, lamp or lantern thereon, or any tree, building, fence, post or other thing set, erected or made for the use or ornament of the city. (Rev. Ords. 1973, § 14-11; Rev. Ords. 1995, § 20-11)

Sec. 20-61. Trespass; peeping toms.

(a) No person shall enter upon the premises of another for the purpose of committing any wanton or malicious act, nor for the purpose or with the intention of invading the privacy of another by peeping into the windows of a house or spying upon any person resident therein.

(b) Nothing contained in this section shall be construed to abridge nor in any way limit the right of a police officer to enter upon private property nor to perform any act necessary in the performance of his official duties. (Rev. Ords. 1973, § 14-12; Rev. Ords. 1995, § 20-12)

Sec. 20-62. Weapons—Discharging firearms, air rifles.

(a) No person shall, except in the performance of a duty required by law, discharge any firearm, rifle or shotgun upon or across any street or public grounds within the city, except at any military exercise or review authorized by the military authority of the State or by the City Council, nor upon any private property without the consent of the owner or tenant thereof.

(b) No person shall discharge an air rifle, air pistol, BB gun or pellet gun in the city.

(c) Violations of this section shall be punishable by a fine of three hundred dollars (\$300.00) per offense. Each day a violation continues shall constitute a separate offense. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(d).

State law reference—Offenses involving weapons generally, G.L. c. 269, § 10 et seq.

Sec. 20-63. Same—Toy pistols, slingshots, etc.

No person shall have in his possession a toy pistol, crotch rubber sling or other device for throwing missiles of any kind with the intent to use the same to the injury of persons or property or to the annoyance or discomfort of any person upon any street. (Rev. Ords. 1973, § 14-15; Rev. Ords. 1995, § 20-15)

Cross reference—Shooting arrows or air guns in streets, § 26-2

Sec. 20-64. Pilotless Aircraft Operation.

Purpose: The use of pilotless aircraft is an increasingly popular pastime as well as learning tool. It is important to allow beneficial uses of these devices while also protecting the privacy, safety and quality of life of residents throughout the City. In order to prevent nuisances and other disturbances of the enjoyment of both public and

private space, regulation of pilotless aircraft is required. The following section is intended to promote the public safety and welfare of the City and its residents. In furtherance of its stated purpose, this section is intended to be read and interpreted so as not to conflict with any relevant rules and regulations of the Federal Aviation Administration, or any other federal, state and local laws and regulations.

(a) Definitions:

Pilotless Aircraft – an unmanned, powered aerial vehicle, weighing less than 55 pounds, that is operated by remote control or internally without direct human contact from within or on the aircraft, sometimes referred to as a drone or unmanned aircraft system.

(b) The City Clerk will provide educational materials on its website concerning current information about FAA Regulations and the safe operation of drones in the City of Newton.

(c) Operating Prohibitions. The use and operation of all pilotless aircraft within the City shall be subject to the following prohibitions.

(1) No pilotless aircraft shall be operated:

- a) over any property in a manner that causes direct and immediate interference with the use or enjoyment of that property;
- b) in a manner that interferes with any manned aircraft;
- c) in a reckless, careless or negligent manner;
- d) so as to use City property to launch or land the pilotless aircraft without a permit as may be required in section (d) below;
- e) for conducting surveillance unless expressly permitted by law or court order;
- f) for capturing a person's visual image, audio recording or other physical impression in any place where that person would have a reasonable expectation of privacy;
- g) over any emergency response efforts;
- h) with the effect of harassing, annoying, or assaulting a person, or creating or causing a public nuisance or trespass;
- i) in violation of a Certificate of Waiver or Authorization issued by the FAA, if so applicable, which Certificate may pertain to operation beyond the line of sight, operation over people, operation at night, or any other category of operation for which a Certificate of Waiver is required;
- j) in violation of federal or state law, or any Ordinance of the City of Newton.

(2) The Chief of Police, or designee, may prohibit the use or operation of pilotless aircraft where it is allowed, or allow the operation of pilotless aircraft where it is prohibited, during an impending or existing emergency, or when such use or operation would pose a threat to public safety.

(d) Permit May be Required:

- (1) **Individual Permits:** A permit may be required to use land maintained by the parks, recreation and culture department, or by any other department or commission of the city, to launch or land a pilotless aircraft. Such permits may be issued by the commissioner of parks, recreation and culture, or designee, or the city entity charged with managing the property, or designee.
- (2) **Event Permits:** The parks, recreation and culture department, or any department or commission charged with managing land owned by the City, may issue permits for groups and special events. Such event permits will be issued to a responsible person who will insure that all operators participating in the event adhere to the requirements of this ordinance.
- (3) **Educational Permits:** The parks, recreation and culture department, or any other city agency with authority over the use and maintenance of city land, may permit the operation of pilotless aircraft for educational purposes. Educational permits must be issued to a responsible adult, and in conjunction with an educational purpose sanctioned by an educational organization.

(e) **Proof of Federal Registration; Proof of Certificate of Waiver or Authorization:** Operators who are subject to FAA registration or who are required to seek and obtain a certificate of waiver or authorization shall provide proof of such documentation to authorized city personnel upon request.

(f) **Noise Ordinance:** All operators shall comply with the noise ordinance at Section 20-13, as amended, at all times while operating pilotless aircraft within the city.

(g) **Penalties:** A violation of any section of this ordinance shall result in a warning for the first offense and shall be punishable by a fine of \$50.00 for each offense thereafter.

(h) **Separate Violations:** Action taken pursuant to this section shall not bar any separate action by any other city department for any other violations.

(i) **Severability:** If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered severable from the remaining provisions, which shall remain in full force and effect.

(j) **Regulations:** The city and its departments may promulgate rules, regulations and policies for the implementation of this ordinance.

(Ord. No. A-97, 12-19-16; Ord. No. B-10, 04-02-18; Ord. No. B-53, 03-02-20)

Sec. 20-65. Firearms Prohibited on City Property.

- (a) It shall be prohibited for any person to carry a firearm on their person, loaded or unloaded:
 - 1) within a building owned by and under the control of the City of Newton;
 - 2) in a park, recreation area or recreation facility owned by and under the control of the City of Newton or its agents;
 - 3) on any public street, sidewalk or public way closed pursuant to a permit for block parties, street festivals or other neighborhood function under these Ordinances, during the duration of the permitted closure of the street, sidewalk or public way.
- (b) This ordinance shall not apply to sworn law enforcement officers.

- (c) This ordinance shall not apply to any building owned by the City and operated as public housing.
- (d) Violations of this section shall be punishable by a fine of three hundred dollars (\$300.00) per day. Each day a violation continues shall constitute a separate offense. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised Ordinances, as amended, pursuant to the authority granted by G.I. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(d).

Sec. 20-66. Limitations on the Issuance of Firearms Business Licenses.

- (a) **Purpose**
The primary purpose of gun control legislation in the Commonwealth is the promotion of public safety and prevention of crime and violence through thoughtful limitation of access to deadly and dangerous weapons to irresponsible people. This interest in protecting the health, welfare and safety of citizens is both compelling and significant, and it is shared equally by the City of Newton. To achieve this goal, and taking into consideration the Constitutional protections afforded to those duly licensed to own and possess firearms, it is a proper exercise of municipal police power to take action to appropriately regulate commercial access to firearms within the City of Newton. This ordinance is intended to supplement the statutory gun control framework of the Commonwealth.
- (b) **Definitions**
For the purposes of this ordinance, the terms used herein shall have the same definitions as set forth in M.G.L. c. 140 5 121, as may be amended.
- (c) **Limitations on licenses for the sale of firearms issued in Newton**
 - (1) The issuance of one (1) license to sell, rent, or lease firearms, rifles, shotguns and machine guns in the City of Newton shall constitute reasonable grounds for the Chief of Police to deny any and all other applications for such license.
 - (2) The Chief of Police shall not issue more than one (1) license to sell, rent or lease firearms, rifles, shotguns and machine guns to be exercised contemporaneously within the City of Newton.
- (d) **Limitations on licenses for gunsmithing issued in Newton**
 - (1) The issuance of one (1) license to be in business as a gunsmith in the City of Newton shall constitute reasonable grounds for the Chief of Police to deny any and all other applications for such license.
 - (2) The Chief of Police shall not issue more than one (1) license to be in business as a gunsmith to be exercised contemporaneously within the City of Newton.
- (e) **Limitations on licenses for the sale of ammunition issued in Newton**
 - (1) The issuance of one (1) license to sell ammunition shall constitute reasonable grounds for the Chief of Police to deny all other applications for such license.

(2) The Chief of Police shall not issue more than one (1) license to sell ammunition to be exercised contemporaneously within the City of Newton.

(3) This section 5 shall not apply to the issuance of a license to sell ammunition to a licensed shooting club or firing range facility for regulated shooting on their premises.

(f) Severability

If any portion of this ordinance is ruled invalid, such ruling will not affect the validity of the remainder of the ordinance. (Ord. No. B-96, 12-20-21)

Sec. 20-67 – 20-70. Reserved.

ARTICLE V. HAWKERS, PEDDLERS, FOOD TRUCKS AND CANVASSERS

DIVISION 1. GENERALLY

Sec. 20-71. Hawking, etc., of articles enumerated in General Laws.

No person shall hawk, peddle or expose for sale any of the articles enumerated in G.L. c. 101, § 17 until he has recorded his name and residence with the sealer of weights and measures and received a record number from such sealer of weights and measures. (Rev. Ords. 1973, § 7-1)

State law reference—Hawkers and peddlers regulated, G.L. c. 101, § 13 et seq.

Sec. 20-72. How merchandise to be carried; articles subject to leakage.

Hawkers or peddlers of articles mentioned in this article shall so carry and convey such articles that they shall not tend to injure or annoy the public health or comfort, and in the case of articles subject to leakage, only in vehicles or receptacles which do not leak. (Rev. Ords. 1973, § 7-2)

Sec. 20-73. Vehicles and receptacles—Name and number to be painted on side; to be neat and clean.

Every vehicle or receptacle used by any hawker or peddler in the city shall have the name and number assigned by the sealer of weights and measures of the person selling painted on two (2) sides of such vehicle or receptacle in letters and figures at least two (2) inches in size. Every such vehicle or receptacle shall be kept neat and clean within and without. (Rev. Ords. 1973, § 7-3)

Sec. 20-74. Same—Inspections by sealer of weights and measures; failure to submit thereto.

Every vehicle or receptacle used by a hawker or peddler in the city shall be submitted to the inspection of the sealer of weights and measures on the first Mondays in April and October of each year and at such other times as such sealer shall require. Failure to submit such vehicle or receptacle on such days of inspection and whenever required by the sealer may be deemed sufficient cause for revocation of any license issued to such hawker or peddler by the city. (Rev. Ords. 1973, § 7-4)

Sec. 20-75. Use of horns, bells, etc.; crying wares to disturbance of citizens.

No hawker or peddler exposing for sale or selling any goods, wares or merchandise shall use a gong, bell or horn or other audible signal for the purpose of attracting customers, or shall cry his wares to the disturbance of the peace and comfort of the inhabitants of the city. (Rev. Ords. 1973, § 7-5)

Cross reference—Unnecessary noises generally, § 20-13

Sec. 20-76. Selling near educational institutions, etc.

No hawker or peddler shall sell or offer for sale any goods, wares or merchandise on any street of the city within five hundred (500) feet of any public or private educational institution or the grounds thereof between the hours of 8:00 a.m. and 4:00 p.m. on days when such educational institutions are in session, nor on any day within five hundred (500) feet of any playground of the city between the hours of 9:00 a.m. and 9:00 p.m., nor on any day within fifteen hundred (1500) feet of the Crystal Lake bathhouse property, including the parking area adjacent thereto. (Rev. Ords. 1973, § 7-6)

Sec. 20-77. Selling within business districts prohibited.

No hawker or peddler shall sell or offer for sale any goods, wares or merchandise on any street of the city within the areas defined as business districts in accordance with the zoning plans and zoning ordinances established by chapter 30. (Rev. Ords. 1973, § 7-7)

Sec. 20-78. Remaining in one place on street for more than five minutes prohibited; exception.

No hawker or peddler on a street of the city and while offering or exposing goods, wares or other merchandise for sale shall remain in one place, or within two hundred (200) feet thereof, for longer than five (5) minutes unless actually engaged in making a sale. (Rev. Ords. 1973, § 7-8)

Cross reference—Streets and sidewalks, Ch. 26

Secs. 20-79—20-80. Reserved.

DIVISION 2. LICENSES FOR HAWKERS AND PEDDLERS OF FOOD

Sec. 20-81. Required.

No person shall hawk, peddle or expose for sale meats, butter, cheese, fish, fresh fruits or vegetables until he has received a license from the sealer of weights and measures or such license as may be issued by the director of standards. (Rev. Ords. 1973, § 7-20)

State law reference—Authority to require license, G.L. c. 101, § 17

Sec. 20-82. Inspections by health and human services department; certificate of approval.

No hawker or peddler shall expose for sale or sell any beverages or food for immediate consumption until the vehicle or receptacle therefor has been inspected and approved by an inspector of the health and human services department of the city and a certificate of such approval issued. Such inspection shall be made annually and at such other times as the commissioner of health and human services shall require. (Rev. Ords. 1973, § 7-21; Ord. No. X-175, 05-26-05)

Cross reference—Health and human services department, Ch. 12, Art. II

Sec. 20-83. Issuance authorized; application.

The sealer of weights and measures may grant a license to go about hawking and peddling or exposing for sale meats, butter, cheese, fish, fresh fruits or vegetables within the city to any person who files in his office a written

application. (Rev. Ords. 1973, § 7-22)

Sec. 20-84. Applications to be certified.

Every application for a license authorized to be issued by this division shall be signed under penalty of perjury by the applicant certifying that he is the person named therein and shall set forth his address and contain a statement relative to any convictions during the past five (5) years of any offense against the laws of the commonwealth or the ordinances or by-laws of any city or town relating to peddling, or of giving insufficient weight or measure, or of any other crime. (Rev. Ords. 1973, § 7-23)

Sec. 20-85. Fee.

The fee for the license authorized to be issued under this division shall be ten dollars (\$10.00), payable annually on the first Monday in April in each year. (Rev. Ords. 1973, § 7-24)

Secs. 20-86—20-87. Reserved.

DIVISION 3. FOOD TRUCKS

Sec. 20-88. Food Trucks Defined

A readily movable trailer or motorized wheeled vehicle, currently registered with the Massachusetts Division of Motor Vehicles, designed and equipped to cook, prepare, and/or serve food for human consumption as a mobile food establishment.

Sec. 20-89. License Required

No food truck may operate without a license issued by the Commissioner of Health and Human Services.

Sec. 20-90. Food Truck Locations

On-street food truck locations shall only be permitted on Wells Avenue. The Department of Planning and Development shall determine the specific location(s) and time periods during which permitted Food Trucks will be allowed to operate on Wells Avenue, taking into account public safety for vehicles and pedestrians. This restriction, and the following permit requirement, does not apply to Food Trucks catering a special event or similar occurrence.

Sec. 20-91. Location Permit to Operate on Public Property

In addition to the license required in Sec. 17-47, a food truck operator wishing to operate on-street must obtain a location permit from the Department of Planning and Development and shall submit a permit application on a form provided by said Department, which at a minimum shall include:

- (1) A description of the business;
- (2) The location and time period, as determined by sec 17-48, for which a location permit is sought and during which, the vendor will be stationary and serving food;
- (3) Description of the Food Truck's presence on the street including any signs or objects that will be proposed to be placed on the sidewalk.

(4) Proof that the vehicle has passed all necessary inspections required by the Newton Fire Department

(5) Proof of a general liability policy in effect during all days and times for which a location permit is sought that names the City as an additional insured and is in a form and for an amount approved by the City;

Such a location permit exempts the permitted food truck from other City requirements for Hawkers and Peddlers in sections 17-27 through 17-29. The location permit shall have a duration of up to one year and is revocable based on non-compliance with the requirements of this ordinance. Should the number of location permit applicants exceed available locations, the Director of Planning and Development shall create an equitable distribution of available locations among qualified applicants. The Director has the authority to not issue a location permit based on legitimate public objectives to diversify food truck offerings in an area or due to issues related to past operations of the Food Truck vendor. No permitted Food Truck shall cease operations during the period covered by the location permit without notifying the Department of Planning and Development.

Sec. 20-92. Food Truck Rules

The following requirements shall apply to all food trucks operating in the City.

- (1) All food truck operators must comply with all applicable federal, state, and local laws, regulations, and ordinances, any conditions on a City license or permit, and any applicable City policies, procedures, standards and guidelines. All licenses are issued subject to the licensee's compliance with this Section and these regulations. Licensees shall supply such information as the City or its agent may require for purposes of the proper enforcement of these regulations. The City or its agent, including the Police and other inspectional departments, may at any time inspect the premises to which the license applies to determine whether the licensee is in compliance with this Section.
- (2) No food truck shall provide or allow any dining area, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters.
- (3) All food truck operators shall offer a waste container(s) for public use that operators shall empty at their own expense. The food truck operator shall inspect all adjacent streets and sidewalks within 100 feet regularly for purposes of removing any litter found.
- (4) Food trucks are encouraged to provide consumers with compostable or recyclable single service articles, such as compostable forks and paper plates, and a waste, recycling container, and composting container for their disposal. No Styrofoam products or plastic bags are permitted.
- (5) No food truck shall make or cause to be made any unreasonable or excessive noise in violation of section 20-13 et seq.
- (6) Grease and grey water must be contained and disposed of in accordance with State Sanitary Code.
- (7) Food trucks shall be limited to no more than 25 feet in length.
- (8) For food trucks on public property, the City reserves the right to require a food truck operator to temporarily move a food truck to a nearby location if the approved location needs to be used for emergency purposes, snow removal, construction, or other public benefit.
- (9) Food trucks must conspicuously display their license and any required permit on the windshield of the truck.
- (10) No mobile food vendor licensee may transfer a mobile food vendor license except upon application to

and approval by the Health and Human Services Commissioner of the transfer.
(Ord. No. A-120, 12-04-17)

Secs. 20-93—20-94. Reserved.

DIVISION 4. SOLICITORS AND CANVASSERS

Sec. 20-95. Defined.

The term "solicitor" or "canvasser" is defined as any person who, for himself or for another person, firm or corporation, travels by foot, automobile or any other type of conveyance from place to place, from house to house, or from street to street, taking or attempting to lease or to take orders for the retail sale of goods, wares, merchandise, services or donations including, without limiting, the selling, distributing, exposing for sale or soliciting of orders for magazines, books, periodicals or other articles of a commercial nature, the contracting of all home improvements, or for services to be performed in the future, whether or not such individual has, carries or exposes for retail sale a sample of the subject of such sale, or whether he is collecting advance payment on such retail sales. (Rev. Ords. 1973, § 7-36)

Cross reference—Rules of construction and definitions generally, § 1-3

Sec. 20-96. Registration required.

It shall be unlawful for any person to engage in business as a canvasser or solicitor calling at residences without the previous consent of the occupant for the purpose of soliciting orders, sales, subscriptions or business of any kind, or seeking for information or donations, without first having registered in the office of the chief of police, or with an officer designated by the chief of police. The registrant shall give his complete identification, his signature, the name of his employer, the nature of the products or services in which he is interested, the name of the manufacturer of such products, or the organization which he is representing, and the proposed method of operation in the city. (Rev. Ords. 1973, § 7-37)

Sec. 20-97. Registration fee, duration.

Each registrant shall pay to the chief of police a registration fee payable to the city in the sum of five dollars (\$5.00) for a period expiring one year from the date of said registration. (Rev. Ords. 1973, § 7-38)

Sec. 20-98. Registration certificate.

Each applicant who shows evidence of good character and pays the fee provided for in section 17-59 shall be furnished a certificate indicating that he has registered and showing the dates covered by such registration; said certificate shall also bear the registrant's photograph. Such registration certificate shall expressly require and be issued only upon the condition that each person who intends to solicit or canvass in the city after the hour of 6:00 p.m. shall, on every such day, inform the office of the chief of police of the streets or neighborhood in which the intended solicitation or canvassing is to occur. Each person shall at all times while soliciting or canvassing in the city carry upon his person the registration certificate and the same shall be exhibited by such registrant whenever he is required to do so by any police officer or by any person solicited. (Rev. Ords. 1973, § 7-39)

Sec. 20-99. Revocation of registration.

Any such registration may be revoked by the mayor or the chief of police because of any violation by the registrant of this division, or of any other ordinance of the city, or any state or federal law, or whenever the registrant shall cease to possess the qualifications and character required in this division for the original registration. (Rev. Ords. 1973, § 7-40)

Sec. 20-100. Inapplicability to salesmen.

This division should not be construed to prevent route salesmen or other persons having established customers to whom they make periodic deliveries from calling upon such customers. (Rev. Ords. 1973, § 7-41)

Sec. 20-101. Exemptions.

The provisions of this division shall not apply to officers or employees of the city, county, state or federal government, or any subdivision thereof, when on official business, or to a person soliciting solely for religious, charitable or political purposes; nor shall this division apply to neighborhood youth and students who solicit for the shoveling of snow or cutting of lawns. (Rev. Ords. 1973, § 7-42)

Sec. 20-102. Deceptive practices.

No solicitor or canvasser licensed or exempted from license may use any plan, scheme or ruse which misrepresents the true status or mission of the person making the call in order to gain admission to a prospective buyer's home, office or other establishment with the purpose of making a sale of consumer goods or services. (Rev. Ords. 1973, § 7-43)

Sec. 20-103. Advertising.

No person shall deposit for the purpose of soliciting a sale, in open view on the premises of any residence, any material, display items, samples or advertising of any nature without the prior consent of the occupant. (Rev. Ords. 1973, § 7-44)

Sec. 20-104. Violations.

Any person who commits an unlawful act described in this division, or carries on the business defined in section 17-57 after his registration is revoked, shall be punished for each offense by a fine as set forth in the Revised Ordinances of the city as from time to time may be amended. (Rev. Ords. 1973, § 7-45)

Secs. 20-105—20-106. Reserved.

**ARTICLE IV.
SECONDHAND AND JUNK DEALERS**

DIVISION 1. GENERALLY

Sec. 20-107. Identification of seller required.

No person licensed to deal in second-hand articles shall acquire any such article for resale unless first shown positive identification by the prospective seller. (Rev. Ords. 1973, § 9-7; Ord. No. 292, 8-14-78)

Cross reference—Recycling and Trash, Ch. 11

State law references—Licensing, regulation of junk and secondhand dealers, G.L. c. 140, § 54; control of junkyards, G.L. c. 140B

Sec. 20-108. Book required to be kept; weekly reports to be filed with police department.

(a) Every shopkeeper licensed to deal in second-hand articles shall maintain a book in which each such article is recorded at the time of acquisition. Such book shall be maintained legibly, and no entry shall be erased, obliterated or defaced. The following, or such other form as may be required by the chief of police, shall be used:

Name and place of business of licensee:

<i>Description of Article</i>	<i>From whom acquired</i>	<i>Date and Hour Acquired</i>
(Include serial nos., engravings, markings)	(Name, age, address)	

* * * * *

(b) In the case of acquisition by lots or on consignment, items with a purchase price of less than twenty-five dollars (\$25.00) each may be grouped and described according to category.

(c) A duplicate, legible copy of each week's entries in such book shall be delivered by the licensee to the chief of police by no later than 5:00 p.m. on the Monday following the close of each business week. The chief of police may grant a waiver of the reporting requirement for classes of articles or types of transactions, in accordance with regulations proposed by the chief of police and approved by the city council. (Rev. Ords. 1973, § 9-8; Ord. No. 292, 8-14-78)

Cross reference—Police, Ch. 24

Sec. 20-109. Police examination of weekly reports.

The chief of police shall designate an officer to examine each report for the purpose of locating any article that is like or similar to one which may have been reported lost or stolen. If any such article is found, the licensee(s) shall be so notified and thereafter shall place a "hold" not to exceed seven (7) days on said article while an investigation is made to determine the true owner. (Rev. Ords. 1973, § 9-9; Ord. No. 292, 8-14-78)

Sec. 20-110. Waiting period before sale of goods; waiver.

(a) No shopkeeper licensed to deal in second-hand articles shall permit to be sold any such articles acquired by him until five (5) days shall have passed after the date of filing of the weekly report to the chief of police.

(b) The chief of police may grant waivers in writing of the waiting period for specific articles, classes of articles, or types of transactions in accordance with regulations proposed by the chief of police and approved by the city council. (Rev. Ords. 1973, § 9-10; Ord. No. 298, 8-14-78)

Sec. 20-111. Enforcement; inspection.

For the purposes of enforcing this chapter the chief of police or any police officers authorized by him may, during business hours, enter upon the business premises used by a licensee and may make a reasonable demand to be shown any or all articles covered by the license. All such articles shall be exhibited to any such officer whenever a reasonable demand shall be made for same. (Rev. Ords. 1973, § 9-11; Ord. No. 298, 8-14-78)

Sec. 20-112. Dealing with minors prohibited.

No dealer in junk, old metals or second-hand articles shall directly or indirectly purchase or receive by way of barter or exchange such goods, or allow such goods to be deposited upon or within his premises, shop or vehicles by any person known or believed to be a minor. (Rev. Ords. 1973, § 9-12; Ord. No. 298, 8-14-78)

Sec. 20-113. Manner of storage.

(a) No second-hand articles or junk shall be stored in any yard nearer than four (4) feet to any building, and clear space of four (4) feet shall be left between any such articles so stored and the rear or sideline of the lot, except when these lines are the line of a street or passageway at least four (4) feet wide.

(b) Any such articles stored outside on a licensee's premises shall be stored in an orderly manner and shall be screened from view by landscaping or fencing. (Rev. Ords. 1973, § 9-13; Ord. No. 298, 8-14-78)

Sec. 20-114. Sale and marking of new articles.

Whenever new, unused or unworn articles are displayed, offered for sale or sold under the same license or on the same licensed premises where the sale of used or second-hand articles is permitted, such used or secondhand articles must be marked clearly and conspicuously as such. (Rev. Ords. 1973, § 9-14; Ord. No. 298, 8-14-78)

Sec. 20-115. Articles not covered by this article.

The purchase, sale or barter of clothing, excluding furs, books, prints, coins or stamps shall not be deemed to be purchase, sale or barter of secondhand articles within the meaning of G.L. c. 140, § 54 and 55 relating to the licensing of secondhand articles dealers. (Rev. Ords. 1973, § 9-16; Ord. No. 298, 8-14-78)

Secs. 20-116—20-122. Reserved.

DIVISION 2. LICENSES

Sec. 20-123. Required.

No person shall be a dealer in, collector of or keep a shop for the purchase, sale or barter of secondhand articles, old metals or junk unless licensed by the chief of police. In deciding whether to grant a license to an applicant, the chief of police shall consider:

- (1) whether the applicant has a criminal record, particularly a record of theft, burglary, robbery, larceny, receiving stolen goods or the like;
- (2) the proposed storage facilities for the second hand articles or junk;
- (3) the location of the proposed place of business; and
- (4) whether the public's interest or convenience is served by granting the license. (Rev. Ords. 1973, § 9-1; Ord. No. 292, 8-14-78; Ord. No. T-86, 4-2-90)

Sec. 20-124. Classes; fees.

(a) Licenses issued under this division shall be of two (2) classes: Class I, dealers in second-hand articles, including antiques and old metals (hereinafter called "secondhand articles"); and Class II, junk dealers and junk collectors.

(b) Any person receiving a license pursuant to this division shall pay for such license the fee prescribed by section 17-3. (Rev. Ords. 1973, § 9-2; Ord. No. 292, 8-14-78)

Sec. 20-125. Numbering; contents; posting.

(a) All licenses granted under the provisions of this division shall be numbered.

(b) A copy of this division shall be printed upon every license issued hereunder. Such license shall set forth the name of the licensee(s), number of the license, and the nature and permanent location at which the business is to be carried on.

(c) Every such license shall be posted conspicuously in the permanent place of business of the licensee. (Rev. Ords. 1973, § 9-3; Ord. No. 292, 8-14-78)

State law reference—Contents of license, G.L. c. 140, § 202

Sec. 20-126. Conformance with zoning ordinance; removal to another location.

(a) No license shall be issued to a dealer in secondhand articles or junk unless the licensee's place of business is located in conformity with the requirements of the zoning ordinance, chapter 30 of the Revised Ordinances of the city.

(b) No such dealer shall change the permanent place of business from that designated in the license without the prior consent of the chief of police. (Rev. Ords. 1973, § 9-4; Ord. No. 292, 8-14-78; Ord. No. T-86, 4-2-90)

Sec. 20-127. Revocation of license.

The chief of police may revoke after a public hearing any licenses issued pursuant to this division when revocation is deemed to be in the public interest or convenience. Failure to comply with any term or provision of this article may result in the suspension or revocation of a license. (Rev. Ords. 1973, § 9-15; Ord. No. 298, 8-14-78; Ord. No. T-86, 4-2-90)

Sec. 20-128. Duration; renewal.

Each license issued under this division shall be in effect for twelve (12) months from the date of its issuance, and may be renewed annually. (Rev. Ords. 1973, § 9-5; Ord. No. 292, 8-14-78)

Secs. 20-129—20-139. Reserved.

**ARTICLE VII.
STORAGE OF INFLAMMABLES**

Sec. 20-140. Required.

No person shall use a building or structure for the keeping, storage, manufacture or sale of inflammables unless licensed by the chief of the fire department. (Ord. No. T-85, 4-2-90)

Sec. 20-141. Definition: inflammables.

For the purposes of this article, inflammables include the following: gunpowder, dynamite, crude petroleum or any of its products, explosive or inflammable liquids or compounds, tablets or torpedoes or any explosives of like nature, or any other explosives, fireworks, firecrackers, or any substances having such properties that it may spontaneously, or acting under influence of any contiguous substance, or of any chemical or physical agency, ignite or inflame or generate inflammable or explosive vapors or gases to a dangerous extent. (Ord. No. T-85, 4-2-90)

Sec. 20-142. License application.

Any application for a license under section 17-130 shall specify the location of the building or structure to be licensed

and shall include a description of the operation, the inflammables involved, the necessary safeguards and a description of how the State Board of Fire Prevention's regulations are met or will be met. (Ord. No. T-85, 4-2-90)

Sec. 20-143. Standards; procedures.

The chief of the fire department shall determine whether a license should be issued to an applicant for a building or structure used for the keeping, storage, manufacture or sale of inflammables by evaluating whether the building or structure meets the standards set out in the regulations of the State Board of Fire Prevention for the keeping, storage, manufacture or sale of inflammables. The chief of the fire department's determination shall be made after a public hearing as provided in G.L. c. 148, § 13. (Ord. No. T-85, 4-2-90)

Sec. 20-144. Conditions.

The chief of the fire department may impose reasonable conditions and restrictions on the licenses granted under section 17-130. (Ord. No. T-85, 4-2-90)

Sec. 20-145. Lapse.

Each license granted under section 17-130 shall lapse if the building or structure described in the license ceases to be used for the keeping, storage, manufacture or sale of inflammables. The holder of the license shall eliminate all hazardous conditions incident to the cessation within three (3) weeks thereof. If the holder fails to do so, the chief of the fire department may cause such conditions to be eliminated and the expense shall become a debt owed the city and shall constitute a lien against the property subject to the provisions of G.L. c. 148, § 13. (Ord. No. T-85, 4-2-90)

Sec. 20-146. Revocation.

The chief of the fire department may revoke licenses for the use of a building or structure for the keeping, storage, manufacture or sale of inflammables or such other licenses described in G.L. c. 148, § 13 in accordance with that section. (Ord. No. T-85, 4-2-90)

Sec. 20-147. Appeal.

Any person aggrieved by the granting of a license pursuant to section 17-130 on the ground that it would constitute a fire or explosion hazard, within ten (10) days after the granting thereof, may appeal to the state fire marshal as provided in G.L. c. 148, § 13. (Ord. No. T-85, 4-2-90)

Editor's note—Article V, Storage of Inflammables, became effective on January 1, 1991 pursuant to the terms of Ord. No. T-85.

**Article VIII.
LODGING HOUSES**

DIVISION 1. GENERALLY

Sec. 20-148. Definitions.

(a) Lodger: A person who occupies space for living and sleeping purposes without separate cooking facilities, paying rent, which may include an allowance for meals; and who is not a member of the housekeeping unit.

(b) Lodging House: Any dwelling designed, occupied, or intended for occupancy by 4 or more lodgers. Includes rooming house, boarding house. It shall not include convalescent, nursing or rest homes; group homes; dormitories of charitable, educational, or philanthropic institutions; fraternity houses; or hotels.

State law reference – M.G.L. c. 140, §22, minus fraternity houses and dormitories of educational institutions

(c) Rooming Unit: The room or group of rooms rented to an individual or household for use as living and sleeping quarters.

(d) Enhanced Single Room Occupancy Units (E-SROs): Any Rooming Unit in a Lodging House that provides cooking facilities within the rooming unit.

State law reference - M.G.L. c.140, §22A – cooking facilities

Sec. 20-149. Requirements for all Lodging Houses.

(a) Common facilities. At minimum the following common facilities are required:

- (1) Kitchen for use by all residents that includes food storage and cooking facilities in compliance with the State Sanitary Code.
- (2) Bathrooms shall be provided in compliance of all applicable codes. Bathrooms shall be provided on the same floor as the associated rooming unit.

(b) Facilities in Rooming Units.

- (1) Rooming Units, unless considered E-SROs, shall not include cooking facilities (convection microwaves, stoves, ranges, toasters, etc.) but may include food storage and non-cooking appliances (e.g. mini-fridge, coffee maker, blender, non-convection microwave) in compliance with the licensee's approved electrical policy (see Sec. 17-144).
- (2) Rooming units shall have individual keyed locks. Resident supervising agent shall keep the master key (Resident Supervising Agent defined in Sec. 17-144).
- (3) Rooming Units may include private bathrooms.

(c) Number of Residents. The maximum number of residents in any rooming unit shall be determined by the State Sanitary Code. The maximum number of adult residents at any Lodging House shall be in accordance with requirements in the Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.

Sec. 20-150. Requirements for Enhanced Single Room Occupancy Units (E-SROs).

Licensed lodging houses may provide E-SROs under the following requirements and in accordance with the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the city.

(a) Life Safety. Inclusion of one or more E-SRO unit in a lodging house shall trigger compliance with minimum life safety requirements applicable to new construction for R-1 occupancies as required in the State Building Code. All E-SRO units shall have two independent means of egress from the unit.

(b) Cooking facilities. Cooking facilities in E-SRO units shall consist of a mini-kitchen providing a sink with hot and cold water, food storage area, refrigerator, and electric cook top with a maximum of 2 burners. Ovens and ranges shall not be permitted. Microwaves with or without convection and other accessory appliances shall be permitted in compliance with the licensee's approved electrical use policy.

(c) Dimensional requirements. Each E-SRO shall have a minimum of 175 square feet.

(d) Max. number of E-SROs. In accordance with MGL c. 140 §22A, only a lodging house letting to more than 5 but less than 20 persons may furnish individual cooking facilities.

(e) Inclusionary Units. E-SRO units that include full living, cooking, and washing facilities, shall be subject to the Inclusionary Housing Section of the Zoning Ordinance (Chapter 30, Section 5.11).

Sec. 20-151. Compliance with City Ordinances and State and Local Codes.

(a) All lodging houses shall comply with the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.

(b) All lodging houses shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the city.

Sec. 20-152. Reserved.

DIVISION 2: LICENSES

Sec. 20-153. License Required.

(a) No person shall operate or cause to be operated a Lodging House unless licensed by the Licensing Board of the City of Newton.

(b) Transfer/Sales of Licenses. No licensee may transfer to another person or entity a license issued pursuant to these regulations except upon application to and approval of the transfer by the Licensing Board. Any such transfer shall be subject to the terms and conditions of the original license, unless otherwise ordered by the Board.

All Licenses are specific to an individual property and shall not be transferred between properties without approval of the Licensing Board.

(c) Display of Licenses. All licenses issued by the City pursuant to these regulations shall be displayed on the premises in a conspicuous place where they can be easily read.

(d) Taxes and Charges. All taxes and charges owed to the City by the Licensee must be paid on a current basis to receive or renew a license. The City may deny a license or license renewal if such charges or property taxes are not current.

Sec. 20-154. Requirements for Licensees and Agents.

(a) Licensee, defined. That person(s) or entity listed on the lodging house license and the owners of the land and building where the lodging house is operated.

(b) Resident Supervising Agent, defined. That person designated by the licensee to carry out day to day responsibilities.

(c) Responsibility of Licensee. The licensee shall be responsible for the proper supervision, operation, and maintenance of the lodging house in accordance with the requirements of these ordinances and all other pertinent laws, regulations, and codes. The appointment of an agent shall in no way relieve the licensee from responsibility for full compliance with the law.

(d) On-site supervision of the premises. Licensed premises must have supervision from a resident who shall be available on a 24-hour basis via phone, or similar mobile communication device, for residents and city staff. In the event that the licensee does not reside on the premises, the licensee shall designate one or more resident supervising agents who do reside at the property. The Licensing Board shall approve such agent(s).

Contact information for the resident supervisor, including cell phone or similar mobile communication device, as applicable, shall be posted in a conspicuous place inside the lodging house and provided to the Police Department, Health and Human Services Department, Fire Department, and Inspectional Services Department.

Resident supervisor, whether licensee or resident supervising agent, must respond to calls from City officials within a reasonable time: within one hour for emergencies and within 24 hours with respect to all other issues.

In the event that no resident supervisor will be at the property for more than 48 hours, e.g. for a vacation, the licensee shall be responsible for ensuring continuity of management by informing residents and the City of Newton Health and Human Services Department and Police Department of the short-term change, and by assuming the role of central point of contact should any issues arise.

(e) Mandatory Certification for Licensees and Agents.

- (1) All Licensees and their resident supervising agent(s) shall complete a two-step certification program to acquaint them with important aspects of their roles with regard to ensuring resident safety and compliance with City ordinances. Certification program materials will be developed by the Newton Inspectional Services Department along with representatives from the Health and Human Services Department, and Fire Department.
- (2) All applicants for new licenses shall review guidance materials and complete a written certification test. Their completed test shall be submitted along with their application for review by the certifying departments and the Licensing Board.
- (3) All applicants shall be required to complete an in-person certificate training program within the first year of their licensure. Such in person training shall be offered at least once per year and will be an instructional program that will educate the licensee and the agent(s) with regard to the requirements of these regulations and other laws or related topics that the City may deem necessary for the safe and proper operation of lodging houses.
- (4) The Licensing Board may at its discretion allow an extension to allow a licensee or agent to complete the in-person certification training in the 2nd year of licensure. Failure to complete the in-person training may result in a fine of the licensee not to exceed \$500.00 or the suspension or revocation of the lodging house license, as the Licensing Board, after notice and hearing, may determine.

(f) Timeliness Requirements when there is a change of Licensee or Resident Supervising Agent. If at any time there is a change in the Licensee or Agent, the newly designated person(s) shall be required to notify the Licensing Board at least 48 hours prior to assuming responsibilities and receive their license within 60 days.

Sec. 20-155. Responsibilities of Licensees and Resident Supervising Agents regarding Residents.

(a) Agreements with Residents. Licensees shall have written agreements with lodgers and supply the Licensing Board a copy of agreements with lodgers and any related documents. Licensees may not enter into agreements with residents that are inconsistent with the terms of these regulations, including, but not limited to, the regulations requiring licenses to inspect occupied and unoccupied rooming units and requiring licensees to institute certain House Rules.

(b) Minors. No room shall be let to any unemancipated person who is younger than eighteen (18) years of age.

(c) Occupancy. No licensee shall vary the occupancy of the licensed premises as certified by the Inspectional Services Department.

(d) Resident and Guest Registries. The licensee of every lodging house shall keep or cause to be kept, in permanent form, a registry of residents. Such register shall contain the true name or name in ordinary use and the last residence of every person engaging or occupying a private room together with a true and accurate record of the room assigned to such person and of the day and hour of move-in and move-out. The entry of names of the residents shall be made by the residents themselves. Copies of these records shall always be maintained and be available for inspection by any City official.

Guests shall be registered in a separate guest registry with day and time of entry and exit listed.

(e) House Rules. Licensees and their agent(s) shall institute house rules as necessary to prevent the lodging house from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.

- (1) House rules should make residents aware of the City's ordinances and the licensee's policies, which shall be in writing and be reviewed by the Inspectional Services and Planning & Development Departments. At a minimum, house rules shall adequately address the following:
 - a) Noise control, including use of audio equipment that may disturb the peace.
 - b) Adherence to laws regarding disorderly behavior.
 - c) Proper garbage disposal and sanitary storage of food.
 - d) Cleanliness of rooming units and common areas.
 - e) Unobstructed egress paths.
 - f) Compliance with Electrical Use Policy.
 - g) Prohibition of use of fire escapes for general access to rooming units.
 - h) Prohibition of tampering or removal of life safety devices.
 - i) Guest policy.
 - j) Pet policy.
 - k) Any other provisions as may be required by the Licensing Board or City Officials.
 - l) Consequences for repeat violations of the House Rules or the requirements of these regulations, up to and including eviction.
- (2) Licensees or agents shall ensure all residents are aware of the house rules by distributing them at move-in, posting them in a visible place in the common area, and distributing updated copies when changes are made.

(3) Any change to the house rules shall be submitted to the Inspectional Services and Planning & Development Departments for review.

(f) Electrical Use Policy. Licensees and their agent(s) shall institute an electrical use policy to prevent the lodging house from being a fire risk to the residents and neighborhood.

(1) Licensees and their agent(s) shall institute an electrical use policy to be approved by the Fire Prevention Bureau and Inspectional Services Departments. At a minimum, electrical use policies shall adequately address the following:

a) Prohibition of use of portable heaters.

b) Prohibition of use of candles or other items that require burning (incense, odor oils, etc.).

c) Prohibition of use of cooking appliances other than non-convection microwaves in rooming units, including prohibition of: toasters, toaster ovens, electric hot plates, gas plates, ovens, stoves (including stoves using sterno or other fuel), or grills. The licensee may, at his/her discretion, prohibit the use of non-convection microwaves in rooming units.

(2) Licensees or agents shall ensure all residents are aware of the electric use policy by distributing it at move-in, posting it in a visible place in the common area, and distributing updated copies when changes are made.

(3) Any change to the electrical use policy shall be submitted to the Inspectional Services Department and Fire Prevention Bureau for review.

Sec. 20-156. Responsibilities of Licensees and Agents regarding Property Maintenance & Management.

(a) Egress from and Access to Building. Licensees and Agents shall be responsible for ensuring that adequate egress is provided. A minimum of two means of egress shall be provided from each occupied story of a lodging house. No private room shall be used as access to a required fire escape except that additional egress shall be provided to E-SROs in accordance with Sec. 17-140.

Licensees and Agents shall promptly remove any obstacle that may interfere with the means of egress or escape from any building or other premises, or access to any part of the building or premises by the fire department. Doors and windows designated as exits shall be kept clear at all times.

(b) Egress Route Information. Licensees and Agents shall be responsible for ensuring that egress routes are clearly marked and identified.

Licensees or Agents shall establish and post an Evacuation Plan in compliance with the National Fire Protection Association Protocol for residential occupancies on all levels of the building and near all exits. The facility is required to conduct at least four Evacuation Drills a year held quarterly and submit documentation to Fire Prevention showing that they have been done.

Licensees or Agents shall ensure that exit signs and emergency lighting along the egress routes are in good working order at all times.

(c) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.

Sec. 20-157. License Application and Renewal Requirements.

(a) Application Requirements. The Licensing Board shall establish application forms and procedures for application filing that at minimum adequately address the following:

- (1) Incomplete applications shall not be accepted.
- (2) Submission of an application containing false information shall be cause for refusing the application or for suspending, canceling, or revoking a license already granted.
- (3) No person or entity shall obtain or renew a license unless the applicant can demonstrate proof of a legal right to the licensed premises for the term of the license.
- (4) At minimum the application for a Licensee must contain the following documents:
 - a) Personal information for the licensee and any resident supervising agent(s) at the time of application.
 - b) Contact information for resident supervisor whether licensee or agent.
 - c) Resume.
 - d) Professional References.
 - e) Copy of House Rules.
 - f) Copy of Electrical Use Policy.
 - g) Copy of Evacuation Plan.
- (5) Application filing fee. At a minimum, the application for a Resident Supervising Agent shall include:
 - a) Personal information.
 - b) Contact information.
 - c) Resume.
 - d) Professional References.
 - e) Application filing fee.

(b) Fees. Inspection and License fees shall be in an amount established by the City Council. Licensing Board Filing fees shall be in an amount established by the Licensing Board.

- (1) Inspection fees are non-returnable once an application has been accepted by the Inspectional Services Department.
- (2) Annual license fees shall be paid upon application for License or License Renewal.

(c) City Inspections and Reports. All licensed premises shall be inspected by the City of Newton prior to initial license, and annually thereafter. Annual Inspections shall be conducted by the Inspectional Services Department, Health and Human Services Department, and Fire Department coordinated as a one-time inspection. The above departments may conduct additional inspections as may be required to ensure safety and compliance with local ordinances, including zoning. All inspecting departments shall keep records of annual inspections and visits to the property throughout each year.

The following City departments shall provide a report to the Licensing Board prior to license renewal: Inspectional Services, Fire, Police, Health and Human Services, Treasurer/collector, and Planning & Development Department as appropriate.

(d) Licensing Board Process Requirements. The Licensing Board shall establish procedures for assessing Lodging House License applications and conduct the meetings in accordance with established rules. The Licensing Board shall approve/deny applications for both licensees and their resident supervising agent(s).

The Licensing Board shall hold a public hearing on each application for a new licensee or agent. Public hearing notice requirements shall mirror those for special permits.

The Board shall not reconsider any matter already determined by the City Council or any other department of the City.

The renewal schedule to be set by the Licensing Board.

(e) Denial of Licenses or Renewal Applications. The Licensing Board may deny an application for a license or renewal or may suspend a license where there is just cause for doing so, including non-compliance with these regulations. A public hearing must be held prior to denial of an application or the suspension of a license. Public hearing notice requirements shall mirror those for special permits.

Sec. 20-158. Violations.

(a) Violations of building, health, or fire code, may result in license review by the Licensing Board. Violation notices for licensed lodging houses from Inspectional Services, Fire, Police, Health and Human Services, Treasurer/Collector, and Planning & Development Department, as appropriate, shall be promptly forwarded to the Licensing Board for consideration.

(b) In addition to the penalties for code and ordinance violations established by the Commonwealth of Massachusetts and City of Newton, the Licensing Board shall have the authority to issue the following penalties for violations of these regulations after notice of hearing and opportunity to be heard.

- (1) More than three (3) code violations not addressed within 30 days of inspection unless a correction plan is approved by the Inspectional Services Department or Fire Prevention Bureau as appropriate.....\$300 Fine
- (2) More vehicles stored on the premises than allowed on the premises by zoning on (3) or more occasions as recorded by the Inspectional Services Department\$300 Fine
- (3) More residents on the premises than allowed on two (2) or more occasions as recorded by the Inspectional Services Department.....\$300 Fine
- (4) If two (2) or more of the above fines are warranted in any 12-month period or if three (3) or more of the above fines are warranted in a 36-month period Denial of License Renewal.

Sec. 20-159. Reserved.**Article IX
SHORT TERM RENTALS****Sec. 20-160. Definitions.**

The meaning of the terms used in this article shall be as follows:

- (a) *Commissioner*: The commissioner of inspectional services.
- (b) *Operator*: A person or persons offering a dwelling unit or bedroom for short-term rental in the City, who must be the record owner of the dwelling unit with the written permission of the condominium association if applicable.
- (c) *Occupancy*: The use or possession or the right to the use or possession of a room in a Short Term Rental normally used for sleeping and living purposes for a period of not more than 30 consecutive calendar days to one person or party, regardless of whether such use and possession is as a lessee, tenant, guest or licensee.
- (d) *Occupant or Guest*: A person who uses, possesses or has a right to use or possess a room in a Short Term Rental for rent under a lease, concession, permit, right of access, license or agreement.
- (e) *Short Term Rental*: The rental of one or more bedrooms (along with any associated living areas) within a dwelling unit on an overnight or short-term basis of less than 30 days to guests. The use is accessory to the primary residential use of the dwelling unit.

Any terms not expressly defined in this article shall have the meaning prescribed by Massachusetts General Laws Chapter 64G, Section 1.

Sec. 20-161. Requirements for Short Term Rentals

- (a) Compliance. No Residential Unit shall be offered as a Short Term Rental except in compliance with the provisions of this article.
- (b) Registration. Operators of any Short Term Rental located in the City of Newton must register with the City in accordance with Sec. 20-162 of this article.
- (c) No Outstanding Code Enforcement or Inactive Building Permits. Operators are prohibited from renting any Short Term Rental if the property is subject to an outstanding building, electrical, plumbing, mechanical, fire, health, housing, trash, noise or zoning code enforcement, including notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices, unpaid fines or if there are any inactive outstanding building permits for the property.
- (d) Three or More Violations in a Twelve Month Period. Should a property receive three or more violation notices within any twelve month period under this article, or of any municipal ordinance, state law, or building code, any residential unit within the property shall be ineligible to be used as a Short Term Rental for a period of six months from the third or subsequent violation.
- (e) Annual Certification. All Operators must file with the Inspectional Services Department a sworn certification attesting to continued compliance with the requirements of this article and all applicable public safety codes. Such certification shall be filed annually on the first business day of January.

- (f) Annual Notice to Abutters. The Operator must, within thirty (30) days after registration of a Short Term Rental, provide notice of such registration to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Such notification shall include the contact information of the Operator and the local contact, the Operator's Inspectional Services Department issued registration number, and a reference to this article. This notice must thereafter be provided annually on the first business day of January to all abutters, owners of land directly opposite any public or private street or way, and abutters to the abutters. Failure to provide such notice shall constitute a violation of this ordinance.

Sec. 20-162. Registration Requirements.

Operators must register with the Inspectional Services Department prior to the occupancy of any Short Term Rental that commences after January 1, 2020 by submitting the following:

- (a) State Certificate. A copy of the State certificate of registration issued in accordance with Massachusetts General Laws Chapter 62C, Section 67.
- (b) Local Operator Affidavit. A completed sworn Local Operator Affidavit, in a form established by the Inspectional Services Department, that at minimum contains the following information:
- 1) Contact information of Operator and Local Contact;
 - 2) Proof of ownership and Residence;
 - 3) Description of operation and number of rooms/units that will be rented;
 - 4) Confirmation that there is no outstanding code enforcement or outstanding building permits;
 - 5) Signature of Operator certifying that the Short Term Rental conforms to this article.
- (c) Smoke and Carbon Monoxide Certificate of Compliance. All Short Term Rentals must comply with the applicable smoke detector and carbon monoxide requirements for residential units set forth in Sec. 10-11 of these Ordinances and Massachusetts General Laws Chapter 148, Section 26E. Operators must schedule an inspection with the Fire Department and receive a Certificate of Compliance indicating that the property meets the smoke detector and carbon monoxide requirements prior to the first occupancy commencing after January 1, 2020. Operators shall be responsible for the smoke detector inspection/permit fee to be paid directly to the Fire Department as set forth in Sec. 17-10 of these Ordinances.
- (d) House Rules. A copy of the House Rules required to be posted and distributed in accordance with Sec. 20-164 of this ordinance.
- (e) Registration Filing Fee. At the time of registration, Operators must pay a filing fee of \$100, an amount established by the City Council. All applicable inspection fees shall be paid directly to the inspecting department at the time of inspection.
- (f) Local Contact Information. When registering, an Operator must provide his or her name and contact information, and, in the event that the Operator is not present during the Short Term Rental, the name and contact information of an individual who is able to respond in person to any issues or emergencies that arise during the Short Term Rental within two (2) hours of being notified. Contact information must include a telephone number that is active 24 hours per day to short term rental occupants and public safety agencies. This phone number shall be included in the registration of the Short Term Rental unit at the time of

registration. Failure of the local contact to respond within the stated period shall constitute a violation of this ordinance.

- (g) Proof of Residence. A property owner or indirect property owner must reside in the dwelling unit operated as a Short Term Rental for a minimum of 9 out of 12 months during each calendar year. Indirect ownership includes but is not limited to a beneficiary of a trust holding record title to the property and a majority owner of the voting stock of a corporation or the membership units of a limited liability company holding record title to the property. When registering a Short Term Rental, an Operator must provide evidence that he or she resides in the dwelling unit for a minimum of 9 out of 12 months during each calendar year, as demonstrated by at least two of the following: utility bill, voter registration, motor vehicle registration, deed, lease, driver's license or state-issued identification.
- (h) All Short Term Rentals registered with the Inspectional Services Department under the provisions of this article shall be issued a certificate of registration and registration number.

Sec. 20-163. Inspections.

- (a) The Inspectional Services Department, Health and Human Services Department, and Fire Department may conduct inspections of any Short Term Rental as may be required to ensure safety and compliance with all applicable ordinances and local, state, and federal codes, including but limited to the provisions of this article. All inspecting departments shall keep records of inspections and visits to the property throughout each year.

Sec. 20-164. Responsibilities of Operators.

- (a) General Responsibility. The Operator shall be responsible for the proper supervision, operation, and maintenance of the Short Term Rental in accordance with the requirements of this article and all other pertinent laws, regulations, and codes. The Operator shall also be responsible for the behavior and activity of guests that results in a violation of this ordinance. The appointment of an agent shall in no way relieve the Operator from responsibility for full compliance with the law.
- (b) No Nuisance. Short Terms Rentals shall not result in the disruption of the peace, tranquility, or safety of the immediate residential neighborhood through the production of noise, vibration, light, glare, trash, fumes, odors, traffic, parking congestion, or any other nuisance beyond that which normally occurs in the immediate residential area.
- (c) Compliance with City Ordinances and State and Local Laws. All Short Term Rentals shall comply with all applicable ordinances and local, state, and federal codes applying generally to residential properties in the City, including but not limited to the City's Zoning Ordinance, Chapter 30 of the Revised Ordinances of the City.
- (d) Commercial Events Prohibited. A Short Term Rental property shall not be used for a commercial event during its occupancy as a Short Term Rental. Commercial events include luncheons, banquets, parties, weddings, meetings, charitable fundraising, commercial or advertising activities, or other gatherings for direct or indirect compensation.
- (e) Agreements with Occupants. Operators may not enter into any rental or use agreements that are inconsistent with the terms of this article.
- (f) Minors. No Short Term Rental shall be rented to any unemancipated person who is younger than eighteen (18) years of age.

- (g) Occupant Registries. The Operator of every Short Term Rental must maintain, in permanent form, a registry log of occupants. It must include the names and home addresses of occupants, occupant's license plate numbers if traveling by car, dates of stay, and the room assigned to each occupant. The registry log must be available for inspection by any City official upon request.
- (h) Fire Prevention Notice. Operators shall post in a visible place inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.
- (i) Notice of Registration. The Operator of every Short Term Rental shall post in a prominent place within the rental the house rules below as well as the certificate of registration with the City of Newton. The Operator shall clearly display the Newton Registration number in all advertisements or notices offering use of the short term rental, including but not limited to online advertisements, postings.
- (j) House Rules. Operators shall institute house rules to prevent the Short Term Rental from being a cause of complaint to the Police Department or a cause of nuisance or annoyance to the neighbors or neighborhood.
- 1) House rules must make occupants aware of the City's ordinances and the Operator's policies, which shall be in writing. At a minimum, house rules shall adequately address the following:
 - i. Noise control, including use of audio equipment that may disturb the peace
 - ii. Adherence to laws regarding disorderly behavior
 - iii. Proper garbage disposal
 - iv. Location of parking stalls on the property
 - v. Neighborhood parking regulations and restrictions
 - vi. Occupancy limits according to the City's Zoning Ordinance
 - vii. Any other provisions as may be required by City Officials.
 - 2) Operators shall ensure all occupants are aware of the house rules by distributing them prior to the date of occupancy and posting them in a visible place.
- (k) Egress and Access. Operators of short term rentals, classified as one-family or two-family dwellings for the building code, shall be responsible for ensuring that adequate egress is provided in accordance with the the appropriate section of Massachusetts State Building Code, 780 CMR.
- (l) Maintenance. The building and all parts thereof shall be kept in good general repair and properly maintained.
- (m) Burden of Proof and Cooperation. The burden of proof is placed on the Operator to demonstrate that they are operating within the limits of this article. Operators must cooperate with any enforcement or investigation proceedings under this article.
- (n) False Information. Submission of false information shall constitute a violation of this ordinance..

Sec. 20-165. Enforcement, Violations and Penalties.

- (a) Enforcement. The Inspectional Services Department and the Newton Police Department or their designees shall be responsible for enforcement of this ordinance, including any rule or regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.
- (b) Notice of violation. The Commissioner or designee shall issue a written notice of any violation of this article. Said notice shall describe the prohibited condition and order that it be remedied within thirty (30) days of receipt of the notice.
- (c) Penalties. Any Operator who violates any provision of this article shall be subject to suspension or termination of the certificate to operate a Short Term Rental and a fine of not more than three hundred dollars (\$300.00) for each violation. Each day a violation occurs shall be a separate offense. The Commissioner shall notify the Massachusetts Commissioner of the Department of Revenue of all such suspensions or terminations. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).
- (d) Violations of building, health, or fire code. Any action by the Commissioner to suspend, terminate or issue fines under this section shall not bar any other separate action by any other City Department for health, fire safety, building code or any other violations.
- (e) Failure to Register. Any person who offers or operates a Short Term Rental without a valid and current certificate of registration from the Inspectional Services Department pursuant to this article, and the record owner of the property offered or operated as a Short Term Rental, shall be fined three hundred dollars (\$300.00) per violation. Each day's failure to comply with a notice of violation or any other order shall constitute a separate violation. Where non-criminal disposition of this section by civil fine has been provided for in sections 17-22 and 17-23 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, section 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 17-23(c).

Sec. 20-166. Effective Date.

The provisions of this Article IX shall take effect on January 2, 2020.

Sec. 20-167. Severability.

The provisions of this article are severable. If any provision, paragraph, sentence, or clause, of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

Sec. 20-168. Reserved.