



Programs & Services Committee Meeting

City of Newton In City Council

Wednesday, October 7, 2020

7:00 PM

The Programs & Services Committee will hold this meeting as Zoom Meeting on Wednesday, October 7 at 7pm. To view this meeting using Zoom use this link: <https://us02web.zoom.us/j/85286671247> or call 1-646-558-8656 and use the Meeting ID 852 8667 1247.

Items Scheduled for Discussion:

#375-20 **Request for a discussion on library re-opening plans**
COUNCILORS NOEL, ALBRIGHT, BOWMAN, DANBERG, DOWNS, KELLEY, AND LAREDO requesting a discussion with the administration about the plans to re-open the library, plans to inform the public about the options the public has for using the library, and to update the Council on the Library's needs.

Chair's Note: *The Committee will receive an update on the status of the following one (1) item to determine its next steps and it is the intention to the Chair to entertain a motion to Hold.*

#49-20 **Request for update on leaf blower ordinance compliance**
COUNCILORS BAKER, LEARY, RYAN, AND HUMPHREY requesting update from the Executive Department on compliance with Newton's leaf blower ordinance and discussion of possible revisions to the ordinance's enforcement provisions to improve compliance.
Programs and Services Held 8-0 on 09/16/2020

Respectfully Submitted,

Josh Krintzman, Chair

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the City of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Dear Mr. Yeo, Chief Mintz and Commissioner Lojek:

Newton has had a leaf-blower ordinance as part of the noise ordinance for over three years. Unfortunately, landscaper compliance, especially over the summer, has been rare, with gas-powered leaf-blowers the rule rather than the exception. Even now, the large machines – as opposed to the 65 Db limited ones – are still in use.

The members of the Programs and Services Committee have been looking for ways to improve compliance as neither the Police nor ISD have the personnel to be able to respond to all complaints, as they have other duties, and when they can, enforcement is often difficult because the current ordinance provides that the operator responsible, and it is difficult to determine if the operator has been a violator before – even if the operator is employed by the same contractor.

After an initial discussion earlier this year about possible remedies, Councilor Baker and Deputy City Solicitor Lawlor investigated the practices in Brookline which has two features Newton does not – landowner responsibility and a registry for those firms using leaf-blowers. Building on the Brookline model, they brought to the Committee on September 16 their recommendations. Those are more particularly set out in the redlined version of the current ordinance, attached. In summary, however, they effect no change in the basic rules of operation – except to clarify that electric leaf-blowers need to comply with the same hours of operation, an ambiguity in the current ordinance. What is added, however, are provisions that would

- Make the leaf-blower contractor responsible for the acts of its employees;
- Make the property owner responsible for violations by those it engages to do the work;
- Require all commercial leaf-blower operators to apply for a permit from ISD, as it currently shares the enforcement authority with the Newton Police. That application would in turn obligate the operator to affirm their understanding of the applicable rules;
- ISD would have the power to issue regulations implementing the ordinance, and charge a small fee (\$25) to cover the cost of the application;
- Makes commercial operation of a leaf-blower without a permit a civil ticket offense;
- Provides that multiple violations of the rules can lose permitted status;
- Provides that ISD would maintain a list of operators which have been granted a permit, from which violators can be removed.

As we would like to bring the ordinance back to the Committee for final review, we wanted to share this background and this draft with you for your comment and suggestions. We recognize that there is no perfect system of assuring compliance, but the Committee feels that these changes would in the long run reduce the amount of time spent by both ISD and the Police on enforcement as well as enhance compliance and therefore the quality of life in Newton.

We would be grateful if you would respond with any comments or suggestions in writing to me, Councilor Baker, and Associate City Solicitor Lawlor by the close of business on Friday, September 24 so that we can review them and take them up at the next meeting of the Committee on October 6. We also invite you to attend the discussion that evening.

Thank you,

Councilor Josh Krintzman, Chair, Programs and Services Committee.

Amend the provisions of Sections. 20-13 (h), (j) and (n) as follows (deleted language struck through, inserted language underscored):

~~(h) *Restrictions on use of leaf blowers.* Notwithstanding the provisions of sections 20-13 (f) and (g), ~~on or after January 1, 2017~~ 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, including any City employee or contractor, shall use or operate a leaf blower within the City unless they do so in compliance with the provisions of this section. ~~of Newton 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. At all other times leaf blowers may be operated subject to the following provisions:~~~~

~~(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 (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.

~~(43)~~ 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.

~~(54)~~ The provisions of section 20-13 (i) shall not apply to leaf blower operation.

(6) Any violation of the restrictions contained in this section shall be subject to the penalties set forth in sections (k) and (m) below. [M1]

(7) Commercial Leaf Blower Operators – permit required.

A. No commercial leaf blower operator, such as a contractor or commercial landscaper, 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 fee for such permit shall be \$25.00. 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. [M2]

B. In addition to the penalties set forth in sections (k) and (m) below, the permit of any commercial leaf blower operator who has received three 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 three 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.

C. 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 (h)(1) or an extension of time pursuant to subsection (h)(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~~contractor~~, the property owner shall be notified of the violation and of any warning or other enforcement issued to the operator~~contractor~~.

(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.