



Programs & Services Committee **Agenda**

City of Newton **In City Council**

Wednesday, April 7, 2021

7:00 PM

The Programs & Services Committee will hold this meeting as a Zoom Meeting on Wednesday, April 7, 2021 starting at 7:00 pm. To view this meeting using Zoom use this link: <https://us02web.zoom.us/j/87454042242> or call 1-646-558-8656 and use the Meeting ID 874 5404 2242.

Items Scheduled for Discussion:

- #61-21** **Request for response to resident petition calling for investment in athletic fields**
COUNCILORS NORTON AND LEARY requesting a response to the 1000+ petition by Newton residents calling for investment in Newton athletic fields.
Programs & Services Held 6-0 on 03/03/2021
- #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 7-0 (Councilor Albright not voting) on 11/19/2020

(Continued)

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.

Referred to Programs & Services and Finance Committees

#49-20(2)

Requesting establishment of a fee for the registration of leaf blower contractors

Programs and Services Committee requesting an appropriate fee be set for registration of leaf blower contractors pursuant to possible revisions in the Noise provisions of Newton Ordinances, Chapter 20, relating to leaf blowers, to provide for registration of leaf blower contractors and their certification of understanding and intention to comply with the provisions of the Noise ordinance, contained in possible revisions to Chapter 20, prepared by the Newton Law Department to improve compliance with existing standards for leaf blower operation.

Programs & Services Held 8-0 on 10/28/2020

Finance Held 5-0 (Councilor Kalis not voting) on 10/28/2020

Respectfully Submitted,

Josh Krintzman, Chair

RECEIVED

Resolution for 2021 APR -1 PM 1: 34

A Resolution by the Newton City Council calling for the investment in, and improvement of, the athletic fields of Newton

CITY CLERK
NEWTON, MA. 02459

WHEREAS, The Newton City Council wants the residents of Newton to have access to world-class recreational facilities; AND

WHEREAS, the Newton Athletic Fields Foundation gathered more than 1,000 signatures from residents seeking improvements to our fields; AND

WHEREAS, leaders and representatives from Newton Youth Soccer, Newton Girls Soccer, Newton Youth Lacrosse, Girls LAX Newton, Newton Mustangs Football, Newton Youth Ultimate, and Newton Area Flag Football have expressed concerns over the availability of Newton's fields; AND

WHEREAS, leaders and representatives from Newton Youth Soccer, Newton Girls Soccer, Newton Youth Lacrosse, Girls LAX Newton, Newton Mustangs Football, Newton Youth Ultimate, and Newton Area Flag Football have expressed concerns over conditions of Newton's Fields; AND

WHEREAS, there is broad agreement that Newton's financial outlook and projections are appropriate for bonding of large capital projects

WHEREAS, Newton was one of the first communities to adopt the Community Preservation Act to generate resources for the acquisition of, and support for, passive and active recreational areas within the city

WHEREAS, deferred maintenance has resulted in quality issues with nearly every athletic field in Newton, deferred maintenance complicates deficiencies and problems and inappropriate deferred maintenance ultimately results in greater expense;

THEREFORE BE IT RESOLVED, that the Newton City Council calls for short-term and long-term action related to our recreational fields; AND

BE IT FURTHER RESOLVED, that the Newton City Council is committed to replace the surface of the three existing synthetic turf fields and construction of additional turf fields, as needed; AND

BE IT FURTHER RESOLVED, that the Newton City Council supports a \$375,000 maintenance budget as the appropriate level for FY22 to avoid further deterioration of some of the city's most precious assets; AND

BE IT FURTHER RESOLVED, that the Newton City Council encourages the creation of a 2-3 year plan to repair key fields as quickly as possible; AND

BE IT FURTHER RESOLVED, that the Newton City Council encourages the creation of a 5-7 year plan to improve athletic field quality, capacity and availability, which is appropriate for current needs and usage of Newton's fields in a prioritized, systemic fashion; AND

BE IT FURTHER RESOLVED, that the Newton City Council supports the use of Community Preservation Act funds, as appropriate, to accomplish the goals of this resolution; AND

BE IT FURTHER RESOLVED, that the Newton City Council supports the use of bonding as a financial tool to lessen the immediate impact on Newton's budget of the immediate needs; AND

BE IT FURTHER RESOLVED, that the Newton City Council supports the increase in rental fees on Newton's recreational fields as an additional means of support for their maintenance; AND

BE IT FURTHER RESOLVED, that the Newton City Council supports a more thorough review of Newton's existing practice of renting grass fields to non-Newton based organizations; AND

BE IT FURTHER RESOLVED, that the Newton City Council supports the exploration of "Tier 2 fees" – with appropriate mitigation in place to avoid impacts on families – as an additional means of support for the maintenance of Newton's recreational fields.

Move the definition of leaf blower from section 20-13 (d) to section 20-13 (h) and amend the provisions of Sections. 20-13 (h), (j) and (n) as follows:

(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. 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 (2) below. At all other times leaf blowers may be operated subject to the following provisions:

(42) 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.

(32) 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 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.

(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 fee for such permit shall be \$1050.00. 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 (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.

Add the following language (redline underscored) to the provisions of Sec. 17-23 (c):

c) DEPARTMENT OF INSPECTIONAL SERVICES: The commissioner of inspectional services, and/or his or her designee, and building inspectors of the department of inspectional services shall be authorized to issue written notice of the following violations:

..... FINE
Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)(6)

() First offense in calendar year Warning

() Second offense in calendar year \$100.00

() Third offense in calendar year \$200.00

() Fourth or subsequent offense in calendar year \$300.00

Sec. 20-13 (h)(6) Commercial leaf blower operator – operation of leaf blower without a permit \$300.00

Add the following language (redline underscored) to the provisions of Sec. 17-23 (d):

(d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

..... FINE

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)(6)

() First offense in calendar year Warning

() Second offense in calendar year \$100.00

() Third offense in calendar year \$200.00

() Fourth or subsequent offense in calendar year \$300.00

Sec, 20-13 (h)(6) Commercial leaf blower operator– operation of leaf blower without a permit \$300.00

#49-20 Alternate language removing NPD enforcement authority for the Leaf Blower section of the Noise Ordinance, Sec. 20-13 (h)

1. Amend Sec. 20-13 (l) Enforcement as follows:

(l) Enforcement. The Newton Police Department and the Inspectional Services Department shall be responsible for enforcement of this ordinance, provided that the Newton Police Department shall not be responsible for enforcement of leaf blower restrictions contained in Sec. 20-13(h). 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.

2. Amend Sec. 17-23 (d) as follows:

d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

..... FINE

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)

- () First offense in calendar year Warning
- () Second offense in calendar year \$100.00
- () Third offense in calendar year \$200.00
- () Fourth or subsequent offense in calendar year \$300.00