



Programs & Services Committee Report

City of Newton In City Council

Wednesday, April 7, 2021

Present: Councilors Krintzman (Chair), Noel, Humphrey, Ryan, Albright, Wright, Greenberg, and Baker
Also Present: Councilors Bowman, Oliver, Malakie, Markiewicz, Lucas, and Downs

City Staff: Nicole Banks, Commissioner of Parks, Recreation and Culture; Jonathan Yeo, Chief Operating Officer; Nathan Giacalone, Committee Clerk

#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.

Action: **Programs & Services Approved a Resolution 8-0**

Notes: The Chair introduced the item, saying that when it was discussed at the March 3rd meeting, the Committee agreed to adopt a resolution to address the concerns raised by the petition regarding the conditions of Newton's fields. He provided the draft resolution language for the Committee to review. Commissioner Banks and Mr. Yeo joined the discussion of this item.

Discussion:

C: This draft resolution is comprehensive and expresses the feelings of the Committee from the March 3rd meeting.

Q: Can Commissioner Banks say when there will be a plan to address this petition?

A: There is no specific update prepared for this meeting. Overall, the PRC is working within the CIP process to keep its projects up to date. The Athletic Fields Subcommittee meetings have also been moving forward and the Parks Commission is also aware of the needs of the fields. The Subcommittee has also been meeting regularly while inviting stakeholders and other community members. One ongoing topic addressed in these discussions and elsewhere is possible revisions to the fee structure. Commissioner Banks said that PRC will soon be ready to meet with the Fields Subcommittee and the Executive Office to discuss these projects. The intent is to have some projects ready for presentation to the CPC in June and to present to the Executive Office within the next month.

Mr. Yeo added that with the budget process beginning in May, the changes made to the operating budget and CIP will be visible. There may be amendments to this from a variety of projects.

Councilor Albright motioned to approve the resolution as drafted which carried 8-0.

#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.

Action: Programs and Services NAN 8-0

Notes: This item was discussed with #49-20(2).

Councilor Albright motioned NAN which carried 8-0.

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.

Action: Programs & Services Approved with effective date of 09/06/21 7-0-1 (Councilor Albright abstaining)
Finance Held 5-0 (Councilor Kalis not voting) on 10/28/2020

Notes: Councilor Baker briefly described the background of this item, saying that the intent is not to make a major change to the leaf blower ordinance but to enhance enforcement to better reduce noise. Based on the attached red-lined materials provided by the Law Department, landscapers would be required to register with City Hall and acknowledge that the landscaper understands and will comply with the ordinance. As an incentive, registration would place the contractor on a public list of approved contractors operating within Newton. Breaking the rules would result in removal from this list. Additionally, these revisions shift liability from the individual employee to the owner of the landscaping company.

Councilor Baker offered an amendment to clarify that homeowners who hire a landscaper from this approved list will be removed from liability in the event of a violation of the ordinance.

Discussion:

C: Most legitimate landscapers do not have a problem with registering. They want all trucks to be properly labeled as per state law. The Committee should set a specific compliance date to meet compliance by.

C: To clarify, it is not a penalty for the homeowner to not hire from the approved contractor list. They would only face a penalty if they had a non-registered contractor who violated the ordinance. It is a liability protection to incentivize compliance.

Q: How is it determined that the homeowner hired somebody from the list?

A: This list will be public and updated by ISD.

Q: If a homeowner hires a registered company and the company gets fined, if the homeowner hires them again will they be fined in the event of another violation?

A: Not as long as the company in question is still on the list of good standing.

The Committee took a voice vote to approve Councilor Baker's amendment which carried 8-0.

The Committee then discussed when it wanted the ordinance revisions to take effect.

Mr. Yeo said that while it would only take a couple of weeks for ISD to get the new registration stickers, the new permitting system would still need to be implemented. He said that if the full Council approves these revisions it could take about a month to implement these changes. For clarification, the standing ordinance takes effect on Memorial Day each year. Mr. Yeo said that if the full Council were to approve it during its April 20th meeting, the revisions could be implemented by May 20th, but it would be a crunch. He also reiterated the stance of the administration that the police need to be involved with enforcement in order for this ordinance to be effective.

C: The Committee needs more time to complete its work on this ordinance.

C: The effective date for these revisions should be far into the summer, even Labor Day or January to give contractors enough time to adapt.

C: The ordinance is already clear about the 65-decibel limit for leaf blowers, so Memorial Day is not too early as landscapers should already be complying since the ordinance has been in effect for two years. However, the Council should not commit to a date of May 20th if the enforcement question has not been settled.

A: If the police are removed from enforcement, this will be done by ISD but there will be no enforcement during nights or weekends.

C: Though the leaf blower ordinance has already been on the books, the registration aspect has not so that would require some time for landscapers to adapt to it.

C: This Committee has decided previously that as a matter of realism, this work would not be done in time for the 2021 leaf blower season. It also needs to give ISD the time it needs to get ready.

Q: Has ISD thought about the processes it would use yet?

A: The administration has talked about this question at length and with Councilors as well. It is a matter of getting the registration stickers and the system. Notifying landscapers would not be complicated either as they also communicate these things with each other. Memorial Day would not be ideal for this timeframe, but it is doable.

C: The sidewalk snow shoveling ordinance was in place without a fine and time needs to be left for educational enforcement to take place first before handing out tickets. Designating Labor Day as the

effective date will allow enough time for this process to take place and for people to learn about the revisions to the ordinance.

The Chair clarified that if no specific date was voted on for the revisions, then they go into effect 20 days after receiving the Mayor's signature.

Councilor Ryan motioned for an effective date for the revisions of January 1, 2022. The Committee voted 4-4 (Councilors Krintzman, Albright, Wright, and Baker opposed) and the motion failed to carry.

Councilor Baker motioned for an effective date for the revisions of Memorial Day, 2021. The Committee voted 4-4 (Councilors Noel, Humphrey, Ryan, and Greenberg opposed) and the motion failed to carry.

Q: Could the registration be implemented sooner and have the city wait until Labor Day to start issuing fines?

A: No, the fine needs to be in place in order for the registration to be effective.

C: Enforcement over landscapers who do not properly label their trucks needs to be discussed more.

Q: Will the permits be issued based on an annual date or rolling throughout the year?

A: Since ISD is authorized to handle the registration process this is up to them.

Councilor Noel motioned for an effective date for the revisions of Labor Day. The Committee voted 6-2 (Councilors Baker and Krintzman opposed) and the motion carried.

Councilor Humphrey introduced an amendment to eliminate police enforcement of the leaf blower ordinance. He said that he was proud of the work done by the Committee so far, but it has yet to answer questions over the role of the police in this ordinance. He said that since numerous parties, including the police themselves, want the police removed from enforcement as it would allow them to focus their resources in a better way such as to investigate the recent break-ins across Newton. This is further in line with the recommendations of the Police Reform Task Force which recommends removing the police from minor issues such as leaf blowers. Councilor Humphrey said that removing the police immediately is not a long-term solution, but it increases the pressure to find one.

C: It would be good to take the police out of this. With budget season coming up, could that be used to get ISD the code enforcer position for leaf blowers?

C: It is time to get this issue away from the police just as the Task Force recommended, not just for leaf blowers but for other similar issues as well. The proposed code enforcer position does not need to be a huge department, just enough so that the police will not need to enforce leaf blowers.

C: The position of some colleagues is understandable, but the police are the only rapid response force capable of enforcing leaf blowers in the city and ISD does not have this capability. The ordinance will not be enforceable without the police. Like the Arlington police chief has said for example, community policing can be defined as what the community wants. In this case that means leaf blowers and the police are the best bet as one extra enforcer in ISD will not be enough. They add teeth to this ordinance.

C: Based on some comparisons made to enforcement of the off-leash dog ordinance, while it would be better to get the police either out of enforcement of this or to increase it is share with the Parks and Recreation Department, this is not currently possible due to contracts.

C: With all the police reform work being undertaken, it does not make sense for the police to remain enforcing this ordinance. This is especially true as they do not want to enforce this either and police performance on this ordinance has been lacking over the years.

C: The issues with dog enforcement are due to union agreements and the sidewalk snow ordinance is currently handled effectively by engineering. Leaf blowers are only 1.5% of calls to the police. They are not a giant proportion of their time and do get enforced. A separate code enforcement team for leaf blowers would need many staff members in order to be viable.

C: This amendment is not a backwards change and helps move forward. It is absurd to still be calling the police for leaf blower enforcement since it brings armed officers to enforce. There are provisions within the union contracts to free up officers if there is a lack of work, which could free up the funds for code enforcers. Additionally, having the police respond to these nuisance calls damages their image.

C: It does not necessarily need to be ISD enforcing leaf blowers, just anybody but the police. The police do not want to enforce this because they believe that they have better ways to serve the community.

C: For those who are saying that removing the police will “force the hand of the administration,” where do they think the money will come from for the increased code enforcement? The police may need more money in order to meet the reform identified by the task force. It is naïve and fiscally irresponsible to assume that the city has the funds for a code enforcement squad. Contrary to what some have said, the police are enforcing leaf blower calls in a timely manner. If they are taken out of enforcement, then this ordinance will have no power.

C: Many people are hesitant to call in leaf blower complaints because the police would come. The city lacks the ability to require police officers to write tickets as they have discretion in the field, but a code enforcer can be required to issue tickets for leaf blower violations. This would be an area to follow up with the police on.

C: Remember that the proposed revisions are focused on the company owners, not the lower level employees. Those companies that follow the rules are at a competitive disadvantage to those that do not. Improving enforcement will improve the quality of life in Newton and in turn, the police reputation.

Q: How does the ticket make its way to the owner of a company? Does a ticket get sent directly to the company or through the employees? These workers often feel intimidated by the police, so is there a better way than going through the crew chief?

A: The intention is that officers would report the name of a violating company to ISD, who will directly issue a fine or warning to the company owner based on what is reported. Ideally the ticket does not need to go through the on-site crew, though the officer would have to if it is an unregistered company. The expectation is that companies will quickly get in line with registration. If registration is put in place, eventually most landscapers currently operating in Newton or thinking about it will seek to register.

Additionally, the accumulation of offenses removes the ability for a company to register in good standing.

C: It is a good idea to remove the police from this process, but the Council needs a better idea for what a replacement to this setup would look like.

Councilor Humphrey motioned to approve the amendment to remove enforcement ability from the police which carried 5-1-2 (Councilor Baker opposed, Councilors Albright and Krintzman abstaining)

Q: Is the definition of commercial leaf blower operator any individual entity or organization, not just somebody with a leaf blower for personal use?

A: Yes.

Q: Why does the language say that a commercial leaf blower operator who receives two or more notices of violation will get penalized? Wouldn't the penalty just come after the second violation?

A: This is based on recommendation from the Law Department to make it clear that a penalty comes at a third violation. The penalty is a 60 day suspension.

C: There is some concern to the number of violations that trigger a suspension, especially if there are multiple trucks out from the same company on one day. Additionally, is there enough supply for landscapers to buy the correct equipment with some current supply problems? The Council should think carefully on the blowback from 60 day suspensions.

Q: If an operator is suspended, how do further offenses factor in when the suspension is over?

A: This is covered by the fine schedule for the entire Noise Ordinance.

C: Most landscapers are important small business owners and members of the community who want to register and comply with the ordinance.

Councilor Baker moved to approve item #49-20(2) which carried 7-0-1 (Councilor Albright abstaining)

The meeting adjourned at 9:20 pm.

Respectfully Submitted,

Josh Krintzman, Chair

REVISION TO Section 20-13 (h)(6)

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.

Programs & Services approved this amendment 8-0 on 04/07/2021

#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

Programs & Services approved this amendment 5-1-2 (Councilor Baker opposed, Councilors Krintzman and Albright abstained) on 04/07/2021

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:

(~~1~~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~~2) 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, 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 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, 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.

(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