



## Programs & Services Committee Agenda

### City of Newton In City Council

**Wednesday, June 8, 2022**

**Present:** Councilors Krintzman (Chair), Humphrey, Greenberg, Noel, Wright, Baker, Albright

**Absent:** Councilor Ryan

**City Staff:** John Carmichael, Chief of Police; Marie Lawlor, Assistant City Solicitor; Marc Welch, Superintendent of Urban Forestry/Deputy Commissioner of Parks, Recreation and Culture; John Lojek, Commissioner of Inspectional Services; Jonathan Yeo, Chief Operations Officer; Lisa Dady, Director of Historic Newton; Nicole Banks, Commissioner of Parks, Recreation and Culture; Nathan Giacalone, Committee Clerk

**#263-22**      **Request for Discussion and Amendments to the Noise Ordinance**  
COUNCILORS BAKER, HUMPHREY, NORTON, RYAN, AND WRIGHT recommending discussion and possible amendments to strengthen the City's noise ordinance and its administration, including those provisions relating to construction and landscaping activity.

**Programs & Services Held #263-22 7-0**

**#263-22(2)**      **Request for leaf blower ordinance discussion and amendments**  
COUNCILORS BAKER, HUMPHREY, AND NORTON recommending discussion of possible amendments to strengthen the ordinances relating to leaf blower activity, including adjustment of fines to \$300 after a warning, [and consolidation of leaf blower violation fines in one section].

**Programs & Services Approved #263-22(2) 7-0; and voted to recommit to the City Council, to be jointly referred to the Finance Committee**

**#263-22(3)**      **Request for leaf blower ordinance discussion and amendments**  
COUNCILORS BAKER, HUMPHREY, AND NORTON recommending discussion of possible amendments to strengthen the ordinances relating to leaf blower activity, including clarification of alteration of the manufacturer's label as an offense.

**Programs & Services Approved #263-22(3) 7-0**

**Note:**      This item was discussed with #198-22, #108-22, and #58-22.

Councilor Baker made a motion to approve #263-22(2) which carried 7-0.

Councilor Baker made a motion to approve #263-22(3) which carried 7-0.

Councilor Baker made a motion to Hold #263-22 which carried 7-0.

**#198-22 Request for leaf blower ordinance discussion and amendments**  
COUNCILORS BAKER, HUMPHREY, AND NORTON recommending discussion of possible amendments to strengthen the ordinances relating to leaf blower activity.

**Action:** Programs & Services Held 7-0 (Councilor Krintzman not voting) on 04/06/22

**Note:** This item was discussed with #263-22, #108-22, and #58-22.

Councilor Baker made a motion to Hold which carried 7-0.

**Referred to Public Safety & Transportation and Programs & Services Committees**

**#108-22 Requesting report as to the implementation of the leaf-blower landscaper registration and enforcement**  
COUNCILORS BAKER, GREENBERG, HUMPHREY, NOEL, ALBRIGHT, AND WRIGHT requesting a report from the Executive Department, including the Chief of Police and the Commissioner of Inspectional Services, as to the implementation of the leaf-blower landscaper registration and enforcement ordinance amendments effective Labor Day 2021.

**Action:** Programs & Services Held 7-0

**Note:** This item was discussed with #263-22, #108-22, and #58-22.

Councilor Baker made a motion to Hold which carried 7-0.

**#58-22 Request for a discussion with ISD regarding noise ordinance Compliance**  
COUNCILORS BAKER, RYAN, AND WRIGHT requesting discussion with Inspectional Services about possible ways of enhancing compliance with the provisions of Newton's noise ordinance which limits construction activity to certain times of day and on Sundays and legal holidays, including possible additional measures to advise contractors and subcontractors of applicable rules to minimize the need for complaint driven enforcement by city staff or police. (formerly #98-20)

**Action:** Programs & Services Held 7-0

**Note:** Items #263-22, #198-22, 108-22, and #58-22 were discussed together. The Committee was joined by Chief of Police John Carmichael, Commissioner of Inspectional Services John Lojek, Assistant City Solicitor Marie Lawlor, and Chief Operations Officer Jonathan Yeo.

Councilor Baker opened discussion as the lead docketer, stating that the purpose of these discussion items was to build upon prior improvements to enforcement of the leaf blower ordinance.

Commissioner Lojek presented the summary of leaf blower enforcement statistics. He stated there has been a 135% increase of registration and emphasized that tickets for a lack of registration are written every day. Over \$10,000 in fines have been issued in the past 8 weeks. Commissioner Lojek also stated that news has been spreading of the City's increased enforcement, leading greater numbers of landscapers to register. He used available GIS data to visualize leaf blower enforcement and demonstrate an even distribution across Newton.

Chief Carmichael stated that one of the biggest issues in the past was poor communication between the Police Department and the Inspectional Services Department (ISD). He reported that there have been significant efforts to improve this and the two departments continue to explore new ways to enhance their collaboration.

### Q&A

**Q:** How many leaf blower violations have been caught through patrolling vs. complaints received?

**A:** Commissioner Lojek answered that ISD receives some complaints but staff can not usually arrive in time. Rather, enforcement personnel will target a particular area each day, catching most violators that way. Chief Carmichael added that over 1800 calls have been received and officers respond as best as they can, though often operators are gone on arrival or the blowers are turned off. These calls are stacked and assigned to officers based on their location. Chief Carmichael also emphasized that residents should call the business line for leaf blower violations rather than 911.

**Q:** What is the nature of the information sharing between the Police Department and ISD now for cases of identified violators, particularly those who have shown up in multiple situations.

**A:** Chief Carmichael answered that ISD shares the information of registered landscapers. Police also track the company, operator, and homeowner and create incident reports as per the ordinance. This data is accumulated within a spreadsheet to preserve the data over time.

**Q:** If an officer on patrol gets a call is there an easy way to check the registration before responding? What is the procedure when a registered company violates the law?

**A:** Chief Carmichael answered that this information is now available due to the increased departmental cooperation. He continued that officers have issued more warnings and education rather than citations for leaf blower violations.

**Q:** Since those who have registered have acknowledged their understanding of the ordinance, should this warrant a ticket with no warning?

**A:** Chief Carmichael stated that this has been discussed but officer discretion is main factor. Newton has years-old case law upholding this principle. As a result, Chief Carmichael urged caution when considering taking officer discretion away. Commissioner Lojek added that ISD does not have the same concerns over discretion and is able to more easily tell its personnel to forgo warnings, particularly after Memorial Day. He elaborated that interaction is minimal in enforcement situations as the focus is on documenting the evidence and issuing the ticket to the landscaper. As a result of this approach, there have been minimal problems with field personnel.

**Q:** Will the enforcement personnel be active in the summer?

**A:** Commissioner Lojek confirmed that he would be.

**Q:** With about 1800 leaf blower calls, about how many are gone on arrival vs warnings?

**A:** Chief Carmichael offered to send out a list of responses to the committee along with a chart to visualize the data.

**Q:** With the graduated fine structure, how do officers determine the appropriate fine to issue?

**A:** Chief Carmichael answered that with the incident reports made after each call, officers can view the logged information about any company. Commissioner Lojek added that ISD can have the information available each day.

**Q:** What is the total registration of landscapers in Newton?

**A:** Commissioner Lojek stated that about three quarters of operators in the city are now registered. He credited the firm enforcement approach for contributing to the high compliance.

Councilors and Atty. Lawlor then summarized the proposed changes to the leaf blower section of the ordinance. The first proposed change, partially due to staff input, would eliminate the graduated fine structure in place and institute a \$300 fine for second and subsequent offenses after a warning. This will supplement the existing \$300 fine for failure to register. The second change would add that it is a violation to alter or conceal the manufacturer's sticker. It was clarified that no changes would be made to the provision which holds a homeowner responsible for an unregistered landscaper violating the ordinance (those who hire a registered landscaper are exempt in the event of a landscaper violation).

Discussion over the amendments regarding the manufacturer's label and the fine structure.

**Q:** Could there be a provision to have a lower fine than \$300 for homeowners or an alternative fine structure?

**A:** It was answered that there has been only about one ticket issued to a homeowner. Atty. Lawlor added that there cannot be a different fine issued for the same offense.

Some Councilors expressed concern over immediately issuing a \$300 ticket after the warning as a potential burden to homeowners. Others responded that with what it costs to hire a landscaper, \$300 is not that much. It was also stated that it is mostly landscapers using the gas equipment anyway.

The Committee decided to create #263-22(2) and #263-22(3) to pass the proposed amendments eliminating the graduated fines and adding the violation regarding the manufacturer's label, respectively.

Councilor Baker made a motion to approve #263-22(2) which carried 7-0. This item will be sent back to the full City Council with the recommendation that it be jointly referred to the Programs & Services and Finance Committees.

Councilor Baker made a motion to approve #263-22(3) which carried 7-0.

Councilors mentioned that many residents have contacted the Council about leaf blowers, asking that more significant action be taken on them. A Councilor stated that the Council should first enhance the fine structure to improve enforcement and see how residents comply with the existing rules before making any more largescale changes.

Mr. Yeo was asked about how residents can report leaf blower complaints to the City and was also told that the brochure has not been updated. He answered that emailing Andrew Mavrelis is one of the best ways. A 311 button has been discussed for this, but it would not lead to enforcement, though Mr. Yeo noted that if numerous complaints are received about the same company enforcement personnel will reach out to them directly. He emphasized that plenty of calls have been received by the police and that the list of registered landscapers is available on the ISD website.

Discussing the noise ordinance concerns in #58-22, Councilors asked about enhancing enforcement through stop work orders. Atty. Lawlor responded that the Council cannot give the ISD Commissioner this power over violations of the General Ordinance, but that stop work orders can only be issued for specific violations of the zoning ordinance. Recently, the Attorney General disapproved a similar bylaw in Brookline. She told the Committee that the options are an application for criminal complaint of violations of the General Ordinance or the civil ticketing described in Chapter 17. Councilors decided to revisit this item to determine the best course of action.

Councilor Baker made a motion to hold items #263-22, #198-22, #108-22, and #58-22 which carried 7-0.

**Referred to Programs & Services and Finance Committees**

**#339-22**      **Transfer \$125,000 from the Current Year Budget Reserve**  
HER HONOR THE MAYOR requesting authorization to transfer the sum of \$125,000 from Acct # 0110498-579000 Current Year Budget Reserve to fund engineering consultants required for the design of the turf fields at the high schools.

**Action:**      **Programs & Services Approved 7-0**

**Note:**      A committee member asked how the project in this and the following three items were selected as priorities and the answer would be given with the next item.

Chair Krintzman made a motion to approve which carried 7-0.

**Referred to Programs & Services and Finance Committees**

**#340-22**      **Appropriation of \$184,244 from June 30, 2021 Certified Free Cash**  
HER HONOR THE MAYOR requesting authorization to appropriate and expend the sum of one hundred eighty-four thousand two hundred and forty-four dollars (\$184,244) from June 30, 2021 Certified Free Cash to resurface the tennis court complex at Newton North High School comprising of 10 courts.

**Action: Programs & Services Approved 7-0**

**Note:** Commissioner Banks joined the Committee along with Deputy Commissioner Marc Welch, Historic Newton Director Lisa Dady, and Mr. Yeo. Commissioner Banks stated that these items are all high priority projects on the CIP plan which undergo multiple reviews through the maintenance plans to see which are at the level of need for a robust capital project.

A Committee member asked if these items were on the maintenance plan. Commissioner Banks answered that the tennis courts have a maintenance plan reviewed by both the maintenance division and the Friends of Newton Tennis. This item was given the highest priority. She continued that the Newton Centre Playground needs resurfacing as the current surface is approaching the end of its lifespan. The synthetic turf replacements have been on the capital plan for at least five years and are approaching a point where good maintenance can no longer keep them usable. Mr. Yeo clarified that the public grounds maintenance item is moving funds around within City departments.

Councilor Krintzman made a motion to approve which carried 7-0.

**Referred to Programs & Services and Finance Committees**

**#341-22 Transfer \$80,000 from the PRC Public Grounds Maintenance Full Time Wages**  
HER HONOR THE MAYOR requesting authorization to transfer the sum of eighty thousand dollars (\$80,000) from Acct #1060252-511002, PRC Public Grounds Maintenance Full Time Wages to the following accounts:

Beaut-Grounds Maint (0160238-546000).....	\$12,000
Public Grounds Maint (0160252-546000).....	\$13,000
Public Grounds Maint (0160252-546000).....	\$30,000
Rec Bldg's- Electricity (0160237-521000).....	\$15,000
Rec Vehicles- Gas/Diesel (0160236-548000)	\$10,000

**Action: Programs & Services Approved 7-0**

**Note:** Councilor Krintzman made a motion to approve which carried 7-0.

**Referred to Programs & Services and Finance Committees**

**#342-22 Transfer \$360,000 to a Parks, Recreation and Culture Account**  
HER HONOR THE MAYOR requesting authorization to transfer and expend a sum of three hundred sixty thousand dollars (\$360,000) from the below accounts to a Parks, Recreation and Culture project account to fund the resurfacing of the Newton Centre Playground.

Financial Services-Savings from Attrition  
(0111049-511001)..... \$280,000  
I.T.- Savings from Attrition  
(0111154-511001) \$80,000

**Action:** Programs & Services Approved 7-0

**Note:** A Committee member asked about the surface and Commissioner Banks answered that it is uniform surfacing “poured in place” which consists of stronger matting tiles which can be replaced individually. It will be fully accessible.

Councilor Krintzman made a motion to approve which carried 7-0.

**#299-22** **Reappointment of Eileen Sandberg to the Commission on Disability**  
HER HONOR THE MAYOR reappointing Eileen Sandberg, 260 Franklin Street, Newton as a member of the Commission on Disability for a term of office to expire on May 31, 2025. (60 days: 07/15/22)

**Action:** Programs & Services Approved 7-0

**Note:** Councilor Krintzman made a motion to approve which carried 7-0.

**#300-22** **Reappointment of Sharon Stout as a Newton Library Trustee**  
HER HONOR THE MAYOR reappointing Sharon Stout, 227 Washington Street, Apt. 2, Newton as a Newton Library Trustee for a term of office to expire on June 30, 2027. (60 days: 07/15/22)

**Action:** Programs & Services Approved 7-0

**Note:** Councilor Krintzman made a motion to approve which carried 7-0.

**#301-22** **Reappointment of Jean Notis-McConarty as a Newton Library Trustee**  
HER HONOR THE MAYOR reappointing Jean Notis-McConarty, 122 Temple Street, West Newton as a Newton Library Trustee for a term of office to expire on June 30, 2027. (60 days: 07/15/22)

**Action:** Programs & Services Approved 7-0

**Note:** Councilor Krintzman made a motion to approve which carried 7-0.

**#302-22** **Reappointment of Geline Williams as a Newton Library Trustee**  
HER HONOR THE MAYOR reappointing Geline Williams, 12 Hereford Road, Waban as a Newton Library Trustee for a term of office to expire on June 30, 2027. (60 days: 07/15/22)

**Action:** Programs & Services Approved 7-0

**Note:** Councilor Krintzman made a motion to approve which carried 7-0.

The meeting adjourned at 8:37pm.

**Respectfully Submitted,**

**Josh Krintzman, Chair**



**Chapter 20, Sec. 20-13(h) and Chapter 17, Sec. 17-23 (c) and (d):***(h) Restrictions on use of leaf blowers.*

Notwithstanding the provisions of sections 20-13 (f) and (g), no property owner or 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; such label must not be altered or concealed;
  - C. Leaf blowers must bear an affixed manufacturer's label documenting a noise rating of 65 dB(A) or less; such label must not be altered or concealed; and
  - D. Leaf blowers ~~may~~must 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 this sections 20-13 (h)~~(4) 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, including a property owner, 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. ~~In addition, penalties after warning for commercial leaf blower operation in violation of the restrictions in this Section 20-13 (h)(1-3) shall be \$300 for each offense.~~
- (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. 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.

**Chapter 17, Sec. 17-23:**

(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:

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)(7)

- ( ) 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)(7) Restrictions on use of Leaf Blowers - Any violation

- ( ) First offense ..... Warning

( ) Second and subsequent offenses ..... \$300.00

~~-\$300.00~~

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

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h) (7)

( ) 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)(7) Restrictions on use of Leaf Blowers - Any violation

( ) First offense ..... Warning

( ) Second and subsequent offenses ..... \$300.00