

Chapter 20

CIVIL FINES AND MISCELLANEOUS OFFENSES*

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ARTICLE I.

SMOKING, TOBACCO PRODUCTS AND ALCOHOLIC BEVERAGES

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

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

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

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

(a) *Declaration of findings and policy:* Whereas there exists conclusive evidence that tobacco smoke causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose, and throat; and, whereas at least one-half of all smokers begin smoking before the age of twenty-one (21); and, whereas an estimated three thousand (3,000) minors begin smoking every day in the United States; and, whereas nicotine in tobacco has been found by the Surgeon General to be a powerfully addictive drug; and, whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major problem; and, whereas a city ordinance to restrict the access of minors to tobacco products is in the interest of public health; now, therefore, it is the policy of the City of Newton to discourage minors from experimenting with tobacco and nicotine and to make tobacco products and nicotine delivery products less accessible to minors.

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

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

***Cross reference**—General penalty for code violations, § 1-6; police, Ch. 24

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

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

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

City: City of Newton.

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

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

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

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

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

Employee: Any individual who performs services for an employer.

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

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco produce has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is flavored.

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

Nicotine delivery product: Any manufactured article or product made wholly or in part of a tobacco substitute or containing nicotine that is expected or intended for human consumption, but not including a product approved by the United States Food and Drug Administration for sale as a tobacco use cessation or harm reduction product

or for other medical purposes and which is being marketed and sold solely for that approved purpose. Nicotine delivery products include, but are not limited to, e-cigarettes.

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

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

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

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

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

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

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

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

(c) Sale or gift to minors prohibited:

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

(2) Required signage and notice of prohibition:

- (a) In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Commissioner. The notice shall be at least forty-eight (48) square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

(b) The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post signage provided by the Commissioner that discloses current referral information about smoking cessation.

(c) The owner or other person in charge of a shop or other place used to sell nicotine delivery products at retail shall conspicuously post a sign stating “The sale of nicotine delivery products to a minor under 21 years of age is prohibited.” The owner or other person in charge of a shop or other place used to sell e-cigarettes at retail shall conspicuously post a sign stating “The use of e-cigarettes at indoor establishments may be prohibited by local law.” The notices shall be posted conspicuously in such a manner that they may be readily seen by a person standing at or approaching the cash register. The signs will be provided by the Commissioner.

(3) *Identification:* Each person selling or distributing tobacco products shall verify the age of the purchaser by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is twenty-one (21) years old or older. Verification is required for any person under the age of 27.

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

(1) No person shall sell or otherwise distribute tobacco or nicotine delivery products within the city without first obtaining a tobacco or nicotine delivery product sales permit issued by the commissioner. Only owners of establishments with a permanent, non-mobile location in Newton are eligible to apply for a permit and sell tobacco and/or nicotine delivery products at the specified location in Newton.

(2) As part of the tobacco and nicotine delivery product sales permit application process, the applicant will be provided with a copy of this section. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco or nicotine delivery product sales regarding both state laws regarding the sale of tobacco to minors and this regulation.

(3) Each applicant selling or distributing tobacco is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco and nicotine delivery product sales permit can be issued.

(4) The fee for an initial tobacco and nicotine delivery product sales permit shall be determined by the commissioner based on the cost of administering the permit process. All such permits shall be renewed annually. The annual renewal fee shall be in an amount determined by the commissioner based upon the actual cost of administering the permit renewal process.

(5) A separate permit is required for each retail establishment selling tobacco and/or nicotine delivery product.

(6) Each tobacco and nicotine delivery product sales permit shall be displayed at the retail establishment in a conspicuous place.

(7) No tobacco and nicotine delivery product sales permit holder shall allow any employee to sell cigarettes, other tobacco products, or nicotine delivery products until such employee reads this regulation and state laws regarding the sale of tobacco to minors and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state laws.”

(8) A tobacco and nicotine delivery product sales permit is non-transferable. A new owner of an establishment

that sells tobacco or nicotine delivery products must apply for a new tobacco and nicotine delivery product sales permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

(9) Issuance of a tobacco and nicotine delivery product sales permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

(10) A tobacco and nicotine delivery product sales permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired.

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

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

(f) *Self service displays:*

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

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

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

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

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

(i) *Cigar sales regulated:*

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

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

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

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

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

(l) *Violations and penalties:*

- (1) A person who violates the provisions of subsection (d)(1) of this section shall be subject to a fine of three hundred dollars (\$300.00) for each violation. Every day in which a person engages in conduct prohibited by subsection (d)(1) of this section shall constitute a single and separate violation.
 - (2) A violation of any provision of this section other than subsection (d)(1) shall be subject to:
 - (a) In the case of a first violation, a fine of one hundred dollars (\$100.00).
 - (b) In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the tobacco and nicotine delivery product sales permit shall be suspended for seven (7) consecutive business days.
 - (c) In the case of a third violation within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the tobacco and nicotine delivery product sales permit shall be suspended for thirty (30) consecutive business days.
 - (d) In the case of four or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the tobacco and nicotine delivery product sales permit shall be revoked for sixty (60) consecutive business days or for the remainder of the permit term, whichever is longer.
 - (e) The tobacco and nicotine delivery product sales permit holder shall be assessed a fine according to the schedule stated in this subsection for each violation of any provision of this section, other than subsection (d)(1), occurring on the premises governed by the permit. In the event of a sale or free distribution of a tobacco product or nicotine delivery product to a minor made by an employee of the permit holder, such employee shall also be subject to a fine in accordance with the schedule stated in this paragraph.
 - (f) Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the tobacco sales and nicotine delivery product permit for thirty (30) consecutive business days.
 - (3) The commissioner shall suspend or revoke a tobacco and nicotine delivery product sales permit granted pursuant to this section upon determination that a permit holder has committed three (3) violations of this section within three (3) years, calculated from the date of the first offense. The commissioner shall provide notice to the permit holder of the intent to suspend or revoke a tobacco and nicotine delivery product sales permit, which notice shall contain the reasons therefore and establish a time and date for a hearing, which date shall be no earlier than seven (7) days after the date of said notice. The permit holder shall have an opportunity to be heard at such hearing and shall be notified of the commissioner’s decision and the reasons therefore, in writing. All tobacco and nicotine delivery products shall be removed from the premises upon suspension or revocation of the tobacco and nicotine delivery product sales permit. Failure to remove shall constitute a separate violation of this section. A permit holder whose permit has been revoked may not apply for a new permit prior to the expiration of one (1) calendar year following the date of revocation.
- (m) *Severability:* The provisions of this section are severable. If any provision of this section or its application to

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

Sec. 20-3 – 20-4. Reserved.

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

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

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

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

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

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

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

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

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

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

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

trademark of an alcoholic beverage or a trade name associated exclusively with an alcoholic beverage.

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

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

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

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

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

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

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

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

(c) Removal:

- (1) The city department or agency having control over a public place where a sign is posted in violation of subsection (b) is hereby authorized to remove such sign, provided that the city department or agency shall, as soon as reasonably possible, provide notice of such removal to the owner of the sign, if the name and address of the owner is readily ascertainable from the sign or if the city department or agency has received notice as to the name and address of the owner of the sign.
- (2) A sign so removed shall be stored for up to thirty (30) days during which time the sign owner or someone designated by the sign owner may reclaim the sign. If a sign removed pursuant to subsection (c)(1) is not reclaimed within thirty (30) days of removal, then the sign shall be declared to be unclaimed surplus property in the possession of the city department or agency which removed such sign and such sign shall be disposed of by the purchasing agent of the city pursuant to section 2-186(b)(7) of these revised

ordinances.

- (3) In the case of a public transportation vehicle, the owner or operator of such vehicle shall remove a sign found to be in violation of subsection (b) within 24 hours of a request by the city to remove such sign. Failure to remove a sign within such timeframe shall be cause for revocation of any license or permission granted by the city in connection with the operation of such public transportation vehicle.

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

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

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

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

- (1) Upon the sidewalk at:

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

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

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

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

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

(c) The Commissioner of Health and Human Services and/or his or her designee(s) shall enforce the provisions of this ordinance. The Commissioner or his or her designee(s) shall, for an initial violation of this section, and may for any subsequent violation, afford the violator the option of enrolling in a smoking cessation/education program approved by the Commissioner and/or his or her designee(s). Proof of completion of a smoking cessation/education program approved by the Commissioner or his or her designee shall serve in lieu of the civil fines set forth in Section 20-21. (Rev. Ords. 2001, Ord. X-14, 4-1-02; Ord. No. Z-17, 12-17-07)

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

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

Secs. 20-9—Sec. 20-12. Reserved.

ARTICLE II. NOISE

Sec. 20-13. Noise control.

(a) This ordinance may be cited as the "Noise Control Ordinance of the City of Newton."

(b) *Declaration of findings and policy.* Whereas excessive sound is a serious hazard to the public health and welfare, safety, and the quality of life; and whereas a substantial body of science and technology exists by which excessive sound may be substantially abated; and, whereas the people have a right to and should be ensured an environment free from excessive sound that may jeopardize their health or welfare or safety or degrade the quality of life; now therefore it is the policy of the City of Newton to prevent excessive sound which may jeopardize the health and welfare or safety of its citizens or degrade the quality of life.

(c) *Scope.* This ordinance shall apply to the control of all sound originating within the limits of the City of Newton except as follows:

- (1) the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work or in training exercises related to emergency activities; and
- (2) all snow clearance activities; and
- (3) any program or activity supervised by the parks and recreation department of the city in effect and as it exists on June 1, 1983.

(d) *Definitions.* For the purposes of this ordinance the following words and phrases shall have the meanings respectively ascribed to them by this section:

Construction and demolition: Any excavation, highway construction, land development or land clearing work, or the erection, demolition, alteration, repair, or relocation of any building or structure, which uses powered equipment such as backhoes, trucks, tractors, excavators, earth moving equipment, compressors, motorized, or power hand tools, manual tools, or equipment of a similar nature as well as two-way radios or other communication equipment; or use of any equipment for recycling, screening, separating, or any other processing of soil, rocks, concrete, asphalt or other raw material.

Electronic devices: any radio, tape recorder or player, television, phonograph, public address system, loudspeaker, amplified musical instrument or any other similar device, except two-way communication radios.

Emergency: any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

Emergency work: any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR): the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Motorcycle: any unenclosed motor vehicle having two or three wheels in contact with the ground, including, but not limited to, motor scooters, minibikes, and mopeds.

Motor vehicles: any vehicle which is propelled or drawn on land by a motor, such as, but not limited to, passenger cars, trucks, truck-trailers, semi-trailers, campers, go-carts, snowmobiles, dune buggies, or racing vehicles, but not including motorcycles.

Noise pollution: a condition caused by a noise source that increases noise levels 10dB(A) or more above background noise level, except that if the noise source produces a tonal sound, an increase at 5dB(A) or more above background noise level is sufficient to cause noise pollution.

Tonal sound: any sound that is judged by a listener to have the characteristics of a pure tone, whine, hum or buzz.

(e) *Noise Pollution prohibited.*

- (1) No person shall willfully, negligently, or through failure to provide necessary equipment or facilities or to take necessary precautions permit the establishment or continuation of a condition of noise pollution caused by a noise source (other than a dog or bird) owned, leased, kept, or controlled by such person, or caused by any activity of such person.
- (2) When the offending noise source is located in public spaces, noise measurements shall be made at, and noise pollution determinations made in relation to, any location a passerby might reasonably occupy. When the offending noise source is located on private property, noise measurements shall be made at, and noise pollution determinations made in relation to, the boundary line of the property within which the offending source is located, or as close thereto as feasible.
- (3) All noise level measurements made pursuant to subsection (e) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

(f) *Time Restrictions.*

- (1) Notwithstanding the provisions of subsection (e) and subject to the maximum noise levels listed in subsection (g), the generation of any noise from all electric motors and/or internal combustion engines employed in yard, garden, or grounds maintenance is prohibited except during the following time periods:
 - (A) Between 7:00 a.m. and 8:00 p.m. on weekdays; or
 - (B) Between 9:30 a.m. and 8:00 p.m. on Saturdays, Sundays and legal holidays as established in section 2-26 of these revised ordinances.
- (2) Notwithstanding the provisions of subsection (e) and subject to the maximum noise levels listed in subsection (g), the generation of any noise from construction and demolition activity is prohibited except during the following time periods:
 - (A) Between 7:00 a.m. and 7:00 p.m. on weekdays; or
 - (B) Between: 8:00 a.m. and 7:00 p.m. on Saturdays;
 - (C) Generation of any noise from construction and demolition activity is prohibited at any hour on Sundays and legal holidays as established in section 2-26 of these revised ordinances, except by permit issued in accordance with subsection (h)(1).
- (3) All public address loudspeakers, either mobile or stationary, shall be prohibited from operating every evening from 9:00 p.m. until 7:00 a.m. the following morning.

- (4) No automobile, motorcycle, truck or vehicle-mounted refrigeration equipment or other motorized vehicle shall be left running when not in traffic, within three hundred (300) feet of any dwelling, hotel or residence, for a period of greater than five (5) minutes.
- (5) Between the hours of midnight and 6:00 a.m. deliveries and pick-ups for commercial or business purposes are prohibited within 300 feet of any dwelling within a residential zone excepting deliveries to such dwellings, deliveries of gasoline to gasoline stations, deliveries or pick-ups at state or federal governmental offices and any other commercial or business delivery or pick-up operation that does not increase noise levels 5dB(A) or more above background noise level. For purposes of this subsection, "deliveries" and "pick-ups" shall include the loading and unloading of a vehicle.
- (6) Between the hours of 7:00 p.m. and 7:00 a.m. trash collection shall be prohibited within five hundred (500) feet of any dwelling.
- (7) Between the hours of 11:00 p.m. and 7:00 a.m. no person or persons shall disturb the peace by causing or allowing to be made any unreasonable or excessive noise, including but not limited to such noise resulting from the operation of any electronic device, or from the playing of any band or orchestra, or from the making of excessive outcries, exclamations, or loud singing or any other excessive noise by a person or group of persons, provided however, that any performance, concert, establishment, band group or person who has received and maintains a valid license or permit from any department, board, or commission of the City of Newton authorized to issue such license or permit shall be exempt from the provisions of this section. Unreasonable or excessive noise for the purposes of this section shall be defined as 5dB(A) or more above background level when measured not closer than the lot line of a residential lot or from the nearest affected dwelling unit.

(g) *Maximum Noise Levels.* Notwithstanding the provisions of subsections (e)(1) and (e)(2), the following are the maximum noise levels that are permitted for the specified purposes:

Maximum noise level dB(A) permitted:

(1) *Vehicles*

Vehicle Class.....	Stationary or Moving
All vehicles over 10,000 lbs. GVW or GCWR	86
All Motorcycles.....	82
Automobiles and light trucks.....	75

Noise measurements shall be made at a distance of fifty (50) feet from the closest point of pass-by of a source or fifty (50) feet from a stationary vehicle.

(2) *Construction and demolition.*

The cumulative noise level of all construction and demolition on one site at any one time shall not exceed 90dB(A). No individual piece of equipment shall exceed a maximum noise level of 90 dB(A). If noise barriers are used that effectively shield nearby areas from a condition of noise

pollution, the following devices shall be exempt from the maximum noise level limitations: jackhammers; pavement breakers; pile drivers; and rock drills.

Maximum noise level dB(A) permitted:

Backhoe, bulldozer, concrete mixer, dump truck, loader, paver, pneumatic tools, roller, scraper 90

Air compressor 85

Generator 90

Electric drills, sanders, saws (except chainsaws) or other power tools of all types, whether hand held or otherwise 75

Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever distance is less.

(3) *Yard, Garden, or Grounds Maintenance Equipment*

Maximum noise level dB(A) permitted:

Commercial Chipper, 3 1/2 inch or greater limb capacity (running at full speed but not chipping) 90

Commercial truck-mounted leaf vacuum..... 90

All other equipment, including home tractor, leaf blower, lawn mower or trimmer 65

Noise measurements shall be made at a distance of fifty (50) feet from the source, or from the nearest lot line, whichever distance is less.

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

(5) *Maximum Noise Levels for HVAC systems.* No person shall operate any air conditioning, refrigeration or heating equipment for any residence or other structure or operate any pumping, filtering or heating equipment for any pool or reservoir in such manner as to create any noise which would cause the noise level on the premises of any other occupied property or if a condominium, apartment house, duplex, or attached business, within any adjoining unit, to exceed the background noise level by more than 5 dB(A). This provision shall not apply, however, to periodic or emergency maintenance or testing of such equipment reasonably necessary to maintain such equipment in good working order. Noise measurements and noise pollution determinations shall be taken in accordance with subsections (e)(2) and (e)(3).

(6) *Alternative Measurement Procedures.* If it is not possible to make a good noise level measurement at the distance specified in subsections (g)(1), (g)(2) and (g)(3), measurement may be made at an alternate distance

and the noise level subsequently calculated for the specified distance. Calculations shall be made in accordance with established engineering procedures.

(7) All noise-level measurements made pursuant to subsection (g) shall be made with a Type I or II A-weighted sound level meter as specified under the American National Standards Institute (ANSI) standards.

(h) *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 board of aldermen promptly after issuance. Promptly after issuance, copies of all such permits shall be filed with the clerk of the board of aldermen and to each ward alderman 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.

(i) *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) may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

(j) *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.

(k) *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 20-20 and 20-21 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 20-21(c) and 20-21(d).

(l) *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)

Cross reference—Sounding warning devices on motor vehicles, § 19-72; noise by hawkers and peddlers, § 17-26.

Secs. 20-14—20-19. Reserved.

ARTICLE III.

CIVIL FINES/NON-CRIMINAL DISPOSITION

Sec. 20-20. Certain ordinance violations subject to civil fine.

(a) As an alternative to initiating criminal proceedings, the sections of these revised ordinances which are listed in section 20-21 may be enforced in the manner provided in General Laws c. 40, section 21D.

(b) Any such enforcing person, as listed in section 20-21, who takes cognizance of a violation of such an ordinance may give to the offender a written notice to appear before the clerk of the district court for Newton at any time during the court's office hours, not later than twenty-one (21) days after the date of such notice.

(c) *Non-criminal disposition upon payment of notice of violation.* Any person notified to appear before the clerk of a district court as hereinbefore provided may so appear and confess the offense charged, either personally or through a duly authorized agent or by mailing to the city clerk together with the notice such specific sum of money as established under section 20-21 as penalty for violation of the ordinance. Upon receipt of such notice and payment, the city clerk shall forthwith notify the district court clerk of such payment and the receipt by the district court clerk of such notification shall operate as a final disposition of the case. An appearance under this subsection shall not be deemed to be a criminal proceeding. No person so notified to appear before the clerk of a district court shall be required to report to any probation officer, and no record of the case shall be entered in any probation records.

(d) *Right of appeal and hearing in the district court.* If any person so notified to appear desires to contest the violation alleged in the notice to appear and also to avail himself of the procedure established pursuant to this section and G.L. c. 40 § 21D, he may, within twenty-one days after the date of the notice, request a hearing in writing. Such hearing shall be held before a district court judge, clerk, or assistant clerk, as the court shall direct, and if the judge, clerk or assistant clerk shall, after hearing, find that the violation occurred and that it was committed by the person so notified to appear, the person so notified shall be permitted to dispose of the case by paying the specific sum of money established as a penalty as aforesaid or such lesser amount as the judge, clerk or assistant clerk shall order, which payment shall operate as a final disposition of the case. If the judge, clerk, or assistant clerk shall, after hearing, find that the violation alleged did not occur or was not committed by the person notified to appear, that finding shall be entered in the docket, which shall operate as a final disposition of the case. Proceedings held pursuant to this subsection shall operate as a final disposition of the case. Proceedings held pursuant to this subsection shall not be deemed to be criminal proceedings. No person disposing of a case by payment of such a penalty shall be required to report to any probation office as a result of such violation, nor shall any record of the case be entered in the probation records.

(e) *Failure of appeal and return to criminal process.* If any person so notified to appear before the clerk of a district court fails to pay the fine provided hereunder within the time specified or, having appeared, does not confess the offense before the clerk or pay the sum of money established as a penalty after a hearing and finding as provided in subsection (d), the clerk shall notify the enforcing person who issued the original notice, who shall determine whether to apply for the issuance of a criminal complaint for the violation of the appropriate ordinance. (Ord. No. V-255, 8-9-99)

Sec. 20-21. Enforcing persons and revised ordinances subject to civil fine.

(a) FIRE DEPARTMENT: The fire chief, fire alarm superintendent, all assistant chiefs and fire prevention personnel shall be authorized to issue written notice of following violations:

.....	<u>PENALTY</u>
() Warning	\$0.00

Sec. 10-5. Setting fire to trees, brush, leaves, etc. prohibited

- () Setting fire to a tree brush, grass, leaves, brushwood, rubbish or other substance..... \$50.00

Sec. 10-8. Basements of certain buildings to be kept free of combustibles and inflammables

- () Improper basement storage of combustibles and/or inflammables..... \$50.00

Sec. 10-9. Halls, stairways and exits of schools to be unobstructed

- () Obstruction of hall(s) and/or stairway(s) of a school building..... \$50.00

Sec. 10-11. Smoke detectors

- () Failure to provide smoke detectors as required for one or two dwelling units (Sec. 10-11(b))..... \$50.00
- () Failure to provide smoke detectors as required for three or more dwelling units (Sec. 10-11(c))..... \$50.00
- () Failure to provide smoke detectors as required for misc. units or rooms (Sec. 10-11(d)).. \$50.00

Sec. 10-42. Fire protective and alarm systems in general

- () Failure to provide fire protective system \$50.00

Sec. 10-43. Installation, removal, permit required

- () Failure to obtain permit (Sec. 10-43(a)) \$50.00
- () Failure to undertake or to complete installation of a fire protective system (Sec. 10-43(c))\$50.00
- () Failure to schedule final inspection (Sec. 10-43(c)) \$50.00
- () Failure to perform test for acceptance (Sec. 10-43(c)) \$50.00
- () Failure to maintain 100% operating system (Sec. 10-43(d)) \$50.00

Sec. 10-44. Maintenance and testing

- () Failure to provide for required maintenance or testing (Sec. 10-44(1)) \$50.00
- () Failure to notify fire department of maintenance, testing or other work (Sec. 10-44(2)) ... \$50.00

Sec. 10-45. False alarms, malfunctions

- () First offense \$50.00
- () 2nd & 3rd* offense..... \$100.00

- () 4* or more offenses \$200.00
- *References to 2nd, 3rd and 4th or more offenses shall be for subsequent offenses occurring within the same fiscal year.

Sec. 10-46. Connection to municipal alarm

- () Failure to complete connection to municipal alarm system (Sec. 10-46(a)) \$50.00
- () Unauthorized connection to municipal alarm system (Sec. 10-46(b)) \$50.00
- () Unauthorized disconnection from municipal alarm system (Sec. 10-46(c)) \$50.00

Sec. 10-47. Violation of state fire prevention code

- () Violation of 527 CMR 1.00 - 50.00 (citation to note section violated) \$50.00

Sec. 26-7. Numbering of buildings

Failure to properly display building numbers or display of unauthorized number:

- () First offense\$0.00
- () Second and each subsequent offense provided however that a written notice of violation for a second offense may not be issued until at least twenty-one (21) days have passed from the date of issuance of the first offense for the same property. \$50.00

(b) HEALTH AND HUMAN SERVICES DEPARTMENT: The commissioner of health and human services, and/or his or her designee, sanitary inspectors of the health and human services department, the chief of police and/or his or her designee, and the administrative director of the board of license commissioners and/or his or her designees shall be authorized to issue written notice of the following violations:

- PENALTY
- () Warning (ticket to note violation)\$0.00

CITY ORDINANCES

Any offense:

- Sec. 12-1, Change of certificate of habitability \$50.00

Section 12-20 through 12-27, recombinant DNA

- () Any offense \$300.00

Section 12-71. Plastic Bag Reduction Ordinance

- () First offense Warning
- () Second offense\$100.00
- () Third offense\$200.00

() Fourth or subsequent offenses.....\$300.00

Section 20-2. Sale of tobacco products

() First offense of any provision of § 20-2, except subsection (d)(1).....\$100.00

() Second offense of any provision of § 20-2, except subsection (d)(1).....\$200.00

() Third or subsequent offense of any provision of § 20-2, except subsection (d)(1).....\$300.00

() Any offense of the provisions of § 20-2, subsection (d)(1).....\$300.00

Sec. 20-7. Smoking prohibited on sidewalks and other public property

() First offense.....\$50.00

() Second offense\$100.00

() Third or subsequent offense\$200.00

Section 20-70. Café furniture on sidewalks

() Any offense \$100.00

HEALTH AND HUMAN SERVICES DEPARTMENT REGULATIONS

Any offense:

() Private wells, permits and registration..... \$50.00

() Sandblasting \$50.00

() Keeping of animals..... \$50.00

() Practice of massage \$50.00

() Operating a massage establishment \$50.00

() Removal/transport of offal or garbage..... \$50.00

() Administrative procedures (105 CMR 400.000)..... \$50.00

() Housing standards (105 CMR 410.000)..... \$50.00

() Recreational camps for children (105 CMR 430.000) \$50.00

() Swimming pools (105 CMR 435.000) \$50.00

() Medical and/or biological waste (105 CMR 480.000)..... \$50.00

- () Food establishments (105 CMR 590.000)..... \$50.00
- () Tanning facilities (105 CMR 123.000)..... \$50.00
- () Subsurface disposal of sanitary sewage (310 CMR 15.00)..... \$50.00
- () General nuisance (G.L. c. 111 § 122 through § 125A) \$50.00
- () Atmospheric air pollution (G.L. c. 111 § 31C) \$50.00
- () Animal quarantine (G.L. c.129 § 21)..... \$50.00
- () Noisome trades (G.L. c.111 § 143)..... \$50.00
- () Solid waste disposal facilities (G.L. c.111 § 150A - § 150B)..... \$50.00
- () Bakeries and bakery products (G.L. c.94 § 1 through § 4) \$50.00

(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:

.....PENALTY

Sec. 20-13. Noise Control

- () 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. 30-20. Signs

- () Non-accessory sign (Sec. 30-20(d)(1))..... \$50.00
- () Roof sign (Sec. 30-20(d)(2))..... \$50.00
- () Portable sign (Sec. 30-20(d)(3))..... \$50.00
- () Excessive area of window signs (Sec. 30-20(d)(4))..... \$50.00
- () Outdated signs (Sec. 30-20(d)(5))..... \$50.00
- () String lights (Sec. 30-20(d)(6))..... \$50.00
- () Illegal temporary sign (Sec. 30-20(h)(1)) \$50.00
- () Illegal short term event sign (Sec. 30-20(f)(10) \$300.00

() Illegal campaign sign (Sec. 30-20(h)(6))..... \$50.00

() Streamer, display, etc. (Sec. 30-20(b)) \$50.00

Sec. 30-8. Use regulations for single residence districts; and

Sec. 30-9. Use regulations for multi-residence districts

() Trailer, recreational vehicle in setback (Sec. 30-8(a)(3)(c); Sec. 30-9(a)(3)) \$50.00

() Commercial vehicle: excessive size (Sec. 30-8(a)(3)(d); Sec. 30-9(a)(3))..... \$50.00

() Commercial vehicle in setback (Sec. 30-8(a)(3)(d); Sec. 30-9(a)(3)) \$50.00

() Too many commercial vehicles (Sec. 30-8(a)(3)(d); Sec. 30-9(a)(3)) \$50.00

() Storage of construction equipment or materials not proper and usual with single-family dwellings (Sec. 30-8(a)(3); Sec. 30-9(a)(3)) \$50.00

Sec. 30-15. Density/dimensional requirements

Any part of a building in a residence district extending nearer the street line than ten (10) feet (Sec. 30-15(d))

() First offense\$0.00

() Second offense..... \$50.00

() Third offense \$100.00

() Fourth offense..... \$200.00

() Fifth or subsequent offense \$300.00

An accessory building in a residence district nearer to any lot line than five (5) feet (Sec. 30-15(m))

() First offense\$0.00

() Second offense..... \$ 50.00

() Third offense \$100.00

() Fourth offense..... \$200.00

() Fifth or subsequent offense \$300.00

Sec. 30-19. Parking and loading facility requirements

() Parking in setbacks (less than 5 stalls) (Sec. 30-19(g)(1))..... \$50.00

() Parking in setbacks (more than 5 stalls) (Sec. 30-19(h)(1))..... \$50.00

- () Business or manufacturing parking facilities in a residential district without a special permit (Sec. 30-19(f)(3)) \$50.00

SPECIAL PERMIT CONDITIONS:

Violations of conditions included in special permits granted by the board of aldermen:

- () First offense \$50.00
- () Second offense..... \$100.00
- () Third offense \$200.00
- () Fourth or subsequent offense \$300.00

Sec. 20-24. Light pollution

- () First offense in a one-year period warning
- () Second offense in a one-year period\$75.00
- () Third offense in a one-year period\$150.00
- () Fourth and subsequent offenses in a one-year period\$300.00

Sec. 20-25. Light trespass

- () First offense in a one-year period warning
- () Second offense in a one-year period\$75.00
- () Third offense in a one-year period\$150.00
- () Fourth and subsequent offenses in a one year period.....\$300.00

Sec. 5-30. Perimeter Fences

- () Erection of fence greater than four (4) feet in height without a permit (Section 5-30(c)).....\$50.00
- () Improper height of fence, residential zoning district (Section 5-30(d)).....\$50.00
- () Improper height of fence, non-residential zoning district (Section 5-30(e)).....\$50.00
- () Improper positioning and/or use of inappropriate material of fence (Section 5-30(f)(1))\$50.00
- () Use of barbed or razor wire; sharp prongs (Section 5-30(f)(2)).....\$50.00
- () Failure to comply with requirements for Scenic Road fences (Section 5-30(f)(6))\$50.00

() Failure to comply with requirements for visibility on corner lots
 (Section 5-30(f)(7))\$50.00

Sec. 5-21. Regulation of Inadequately Maintained Vacant Properties

() Any offense\$300.00

Sec. 5-22 Regulation of Public Nuisances: Keeping of Junk, Debris, Overgrown Vegetation

() Any offense; days one (1) through seven (7) that the violation continues\$100.00 per day

() Any offense; days eight (8) through fourteen (14) that the violation continues\$200.00 per day

() Any offense; days fifteen (15) and each subsequent day thereafter that the violation
 continues\$300.00 per day

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

.....PENALTY

() Warning\$0.00

Sec. 3-22. Vaccination certification.

() Any offense \$50.00

Sec. 3-23. License fees; vaccination; certification and exemptions (dogs)

() Any offense \$50.00

Sec. 3-24. Disturbing the peace by barking, etc.

() Any offense \$50.00

Sec. 3-25. Complaint of nuisance; investigation by dog officer.

() Any offense \$50.00

Sec. 3-26. Restraint of dogs.

() Any Offense..... \$50.00

Sec. 3-27. Muzzling or confinement of dogs.

() Any offense \$50.00

Sec. 3-29. Removal and disposal of canine waste.

() Any Offense..... \$50.00

Sec. 20-13. Noise Control

- () 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. 20-51 Depositing of Litter

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

Sec. 26-8. Removal of snow and ice from sidewalks in certain districts.

- () First offense in calendar year \$100.00
- () Second offense in calendar year \$200.00
- () Third and subsequent offenses in calendar year \$300.00

Sec. 26-9. Putting snow and ice upon streets, sidewalks and bridges

- () Placing snow or ice on a public way (street, sidewalk or bridge)
 - First offense in calendar year \$100.00
 - Second offense in calendar year \$200.00
 - Third offense and subsequent offenses in calendar year \$300.00
- () Causing or permitting snow or ice to be placed upon a public way (street, sidewalk or bridge)
 - First offense in calendar year \$100.00
 - Second offense in calendar year \$200.00
 - Third offense and subsequent offenses in calendar year \$300.00

Sec. 26-24. Permitting material to remain upon sidewalks and streets.

- () Any offense \$25.00

(e) DEPARTMENT OF PARKS AND RECREATION: The commissioner of parks and recreation, in his capacity

as tree warden, or such other municipal official as may hereafter be assigned the duties of tree warden, shall be authorized to issue written notice of the following violations:

..... PENALTY

() Warning:.....\$0.00

Sec. 21-82. Removal of a tree without a permit

()Any offense\$300.00

Sec. 21-83. Failure to comply with a condition contained in a tree removal permit

()Any offense\$300.00

Sec. 21-85. Failure to replace a tree

()Any offense\$300.00

Sec. 21-86. Failure to make a payment into the tree replacement fund

()Any offense\$300.00

Sec. 21-87. Failure to comply with a stop work order

()Any offense \$300.00

(f)DEPARTMENT OF PUBLIC WORKS: The commissioner of public works, and/or his or her designee, shall be authorized to issue written notice of the following violations:

..... PENALTY

Sec. 11-7. How trash to be placed for collection.

() First offense per 365 day period written warning

() Second offense per 365 day period\$50.00

() Third offense and subsequent offenses per 365 day period\$75.00

Sec 11-8. How recyclables to be placed for collection.

() First offense per 365 day period written warning

() Second offense per 365 day period\$50.00

() Third offense and subsequent offenses per 365 day period\$75.00

Sec. 11-9(a). Participation in and enforcement of recycling and trash program

() First offense per 365 day period written warning

() Second offense per 365 day period\$50.00

() Third offense and subsequent offenses per 365 day period\$75.00

Sec. 11-10 (c) When trash and recyclable materials to be placed for collection

() First offense per 365 day period written warning

() Second offense per 365 day period\$50.00

() Third offense and subsequent offenses per 365 day period.....\$75.00

(Ord. No. T-126, 3-4-91; Ord. No. T-241, 10-21-91; Ord. No. U-29, 10-3-94; Ord. No. V-8, 2-6-95; Ord. No. V-63, 2-5-96; Ord. No. V-69, 3-4-96; Ord. No. V-193, 8-10-98; Ord. No. V-197, 10-5-98; Ord. No. V-255, 8-9-99; Ord. No. V-275, 12-6-99; Ord. No. X-14, 4-1-02; Ord. No. X-142, 03-21-05; Ord. No. X-175, 05-26-05; Ord. No. X-244, 12-18-06; Ord. No. Z-17, 12-17-07; Ord. No. Z-27, 05-19-08; Ord. No. Z-32, 07-14-08; Ord. No. Z-57, 11-16-09; Ord. No. Z-60, 12-21-09; Ord. No. Z-68, 06-21-10; Ord. No. Z-78, 02-22-11; Ord. No. A-11, 02-04-13; Ord. No. A-14, 03-18-13; Ord. No. A-18, 04-01-13; Ord. No. A-41, 06-16-14; Ord. No. A-50, 12-01-14; Ord. No. A-56, 01-20-15; Ord. No. A-96, 12-05-16)

Secs. 20-22 Reserved.

ARTICLE IV. LIGHT TRESPASS

Sec. 20-23. Definitions.

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

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

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

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

Sec. 20-24. Light pollution prohibited.

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

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

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

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

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

Sec. 20-25. Light trespass prohibited.

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

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

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

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

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

Sec. 20-26. Waiver.

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

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

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

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

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

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

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

Sec. 20-27. Enforcement.

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

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

Sec. 20-28. Transitional provisions.

(a) Light sources which are in place and in regular use as of the date of adoption of section 20-24 shall not be subject to the provisions of such section until five years after the effective date hereof.

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

(c) Nothing in sections 20-24 and 20-25 shall require the removal or destruction of an existing light source which would be in violation of such section(s) if it were to be used to emit light, so long as such light source is

turned off and does not emit light. (Ord. No. X-142, 03-21-05)

Secs. 20-29—20-49. Reserved.

**ARTICLE V.
MISCELLANEOUS OFFENSES**

Sec. 20-50. Defacing property.

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

Sec. 20-51. Depositing of litter.

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

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

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

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

Sec. 20-53. Reserved.

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

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

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

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

Sec. 20-55. Hours for gas stations.

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

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

this section.

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

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

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

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

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

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

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

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

Sec. 20-57. Nude swimming.

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

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

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

No person shall paint or draw any words or figures, or post any written or printed matter upon the property of any person without the consent of the owner or occupant thereof, nor upon any property of the city without the consent of the commissioner of public works. (Rev. Ords. 1973, § 14-9: Rev. Ords. 1995, § 20-9)

Sec. 20-59. Reserved.

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

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

Sec. 20-61. Trespass; peeping toms.

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

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

Sec. 20-62. Weapons—Discharging firearms.

No person shall, except in the performance of some legal duty, discharge any firearm upon or across any street or public grounds within the city, except by permission of the board of aldermen, nor upon any private property without the consent of the owner or tenant thereof. (Rev. Ords. 1973, § 14-14; Rev. Ords. 1995, § 20-14)

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

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

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

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

Sec. 20-64. Pilotless Aircraft Operation.

Purpose: The use of pilotless aircraft is an increasingly popular pastime as well as learning tool. It is important to allow beneficial uses of these devices while also protecting the privacy of residents throughout the City. In order to prevent nuisances and other disturbances of the enjoyment of both public and private space, regulation of pilotless aircraft is required. The following section is intended to promote the public safety and welfare of the City and its residents. In furtherance of its stated purpose, this section is intended to be read and interpreted in harmony with all relevant rules and regulations of the Federal Aviation Administration, and any other federal, state and local laws and regulations.

(a) Definitions:

Pilotless Aircraft – an unmanned, powered aerial vehicle, weighing less than 55 pounds, that is operated without direct human contact from within or on the aircraft.

(b) Registration: Owners of all pilotless aircraft shall register their pilotless aircraft with the City Clerk’s Office, either individually or as a member of a club, as follows:

(1) Individual Registration: Individual owners of pilotless aircraft shall register each pilotless aircraft with the City Clerk’s office, prior to operation. The cost of registration shall be \$10.00 per Owner and such cost of registration shall include all pilotless aircraft owned by the Owner. Owners must have proof of registration in their possession when operating a pilotless aircraft. Registration shall include the

following:

- a) The owner's name, address, email address and phone number;
- b) The make, model, and serial number, if available, of each pilotless aircraft to be registered;
- c) A copy of the Owner's Federal Aviation Administration Certificate of Registration for pilotless aircraft;

(2) Club Registration: Members of a pilotless aircraft hobby club may register their pilotless aircraft through a responsible adult member of the Club. Each Club shall be issued a single identifying registration number by the City Clerk's Office to be affixed to each pilotless aircraft belonging to members of the Club. The cost of Club Registration shall be \$10 per Club and the cost of registration shall include all members of that Club. The responsible adult member shall update the Club's roster of members with the Clerk's office on an annual basis. All other requirements of Section 2(a)(i-iii) shall apply to Club registration.

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

(1) No pilotless aircraft shall be operated:

- a) over private property at an altitude below 400 feet without the express permission of the owner of said private property;
- b) at a distance beyond the visual line of sight of the Operator;
- c) in a manner that interferes with any manned aircraft;
- d) in a reckless, careless or negligent manner;
- e) over any school, school grounds, or other City property or sporting event without prior permission from the City, unless a permit is required as in Section 4, below;
- f) for the purpose of conducting surveillance unless expressly permitted by law or court order;
- g) for the purpose of capturing a person's visual image, audio recording or other physical impression in any place where that person would have a reasonable expectation of privacy;
- h) over any emergency response efforts;
- i) with the intent to harass, annoy, or assault a person, or to create or cause a public nuisance;
- j) in violation of federal or state law, or any Ordinance of the City of Newton.

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

(d) Permit May be Required:

(1) Individual Permits: A permit may be required to use land maintained by the Parks and Recreation

Department, or by any other Department or Commission of the City, to launch or land a pilotless aircraft. Such permits may be issued by the Parks and Recreation Department Head, or designee, or the City entity charged with managing the property, or designee. Individual operators shall adhere to the registration requirements of Section 2 above.

(2) **Event Permits:** The Parks and Recreation Department, or any Department or Commission charged with managing land owned by the City, may issue Permits for groups and special events. Such Event Permits will be issued to a responsible person who will insure that all operators participating in the event adhere to the requirements of this ordinance, except that individual participants in an event under this subsection are not required to register in accordance with Section 2.

(3) **Educational Permits:** The Parks and Recreation Department, or any other City agency with authority over the use and maintenance of City land, may permit the operation of pilotless aircraft for educational purposes. Educational permits must be issued to a responsible adult, and in conjunction with an educational purpose sanctioned by an educational organization.

(e) **Noise Ordinance:** All Operators shall comply with the Noise Ordinance at Section 20-13, as amended, at all times while operating pilotless aircraft within the City.

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

(g) **Separate Violations:** Action taken pursuant to this section shall not bar any separate action by any other City Department for any other violations.

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

(i) **Regulations:** The City and its Departments may promulgate rules, regulations and policies for the implementation of this Ordinance. (Ord. No. A-96, 12-19-16)