

Chapter 20

OFFENSES AND MISCELLANEOUS PROVISIONS*

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ARTICLE I. SMOKING, TOBACCO PRODUCTS AND ALCOHOLIC BEVERAGES

Sec. 20-1. Distribution of Tobacco Products.

No person in the business of selling or otherwise distributing cigarettes or other tobacco or smoking 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 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.

(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 eighteen (18); 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 to make tobacco 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:

***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.

City: City of Newton.

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

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.

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.

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

Minor: Any individual who is under the age of eighteen (18).

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.

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

(c) *Sales to minors prohibited:*

(1) No person shall sell tobacco products or permit the same to be sold to a minor.

(2) *Notice of prohibition:* 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.

(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 18 years old or older. Verification is required for any person under the age of 27.

(d) *Tobacco sales permit:*

- (1) No person shall sell or otherwise distribute tobacco within the city without first obtaining a tobacco 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 products at the specified location in Newton.
- (2) As part of the tobacco 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 sales regarding both state laws regarding the sale of tobacco and this regulation.
- (3) Each applicant is required to provide proof of a current tobacco sales license issued by the Massachusetts Department of Revenue before a tobacco sales permit can be issued.
- (4) The fee for an initial tobacco sales permit shall be determined by the commissioner based on the cost of administering the permit process. All such permits shall be renewed annually no later than June 1. 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.
- (6) Each tobacco sales permit shall be displayed at the retail establishment in a conspicuous place.
- (7) No tobacco sales permit holder shall allow any employee to sell cigarettes or other tobacco products until such employee reads this regulation and state laws regarding the sale of tobacco 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 sales permit is non-transferable. A new owner of an establishment that sells tobacco must apply for a new tobacco 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 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 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 vending machines:*

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

(f) *Self service displays:*

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

(g) *Ban on Free Distribution and Single Cigarettes:*

No person shall distribute, or cause to be distributed, any free samples of tobacco 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.

(h) *Prohibition of the Sale of Tobacco Products by Health Care Providers:*

No health care provider located in the City of Newton shall sell tobacco products or cause tobacco 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 cause tobacco products to be sold.

(i) *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 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 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 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 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 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 permit for thirty (30) consecutive business days.
- (3) The commissioner shall suspend or revoke a tobacco 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 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 products shall be removed from the premises upon suspension or revocation of the tobacco 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.

(j) *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)

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 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.

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 product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product; or any sign which is used for the purpose or effect of promoting the use or sale of a tobacco product through such means as, but not limited to, the identification of a brand of a tobacco product, a trademark of a tobacco product or a trade name associated exclusively with a tobacco product.

(b) Alcohol and tobacco 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 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)

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)

Secs 20-8—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 therefor 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 noise sources:

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 equipment.*

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*

(i) 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.

(ii) *Transition period.* Notwithstanding the maximum maintenance equipment noise levels listed in subsection (3)(i), maximum noise levels dB(A) for all yard, garden, or grounds maintenance equipment, excluding commercial chippers and vacuums shall be as follows:

1. Maximum noise level dB(A) permitted up to two (2) years after effective date of this Section:

- a) Home tractor, leaf blower.....80
- b) Lawn mower or trimmer75

2. Maximum noise level dB(A) permitted from two (2) years to four (4) years after effective date of this section, all equipment.....70

(4) *Maximum Noise Level Exclusions.* The following devices shall be exempt from the maximum noise limitations set forth in subsection (g)(2): jack hammers, pavement breakers; pile drivers, rock drills, provided that effective noise barriers are used to shield nearby areas from a condition of noise pollution. The time limitations contained in subsection (f)(2) shall still apply.

(5) *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).

(6) *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).

(7) *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.

(8) 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 one hundred dollars (\$100.00). 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)

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:

PENALTY

() 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 20-2. Sale of tobacco produces

- () 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

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

- () Any Offense\$50.00
- () Warning \$0.00

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. 20-40 Perimeter Fences

- () Erection of fence greater than four (4) feet in height without a permit (Section 20-40(c))\$50.00
- () Improper height of fence, residential zoning district (Section 20-40(d))\$50.00
- () Improper height of fence, non-residential zoning district (Section 20-40(e)).....\$50.00
- () Improper positioning and/or use of inappropriate material of fence (Section 20-40(f)(1))\$50.00
- () Use of barbed or razor wire; sharp prongs (Section 20-40(f)(2)).....\$50.00
- () Failure to comply with requirements for Scenic Road fences (Section 20-40 (f)(6))\$50.00
- () Failure to comply with requirements for visibility on corner lots (Section 20-40 (f)(7))\$50.00

Sec. 20-70 Regulation of Inadequately Maintained Vacant Properties

- () Any offense\$300.00

(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

() Any Offense\$50.00

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

() Any offense \$25.00

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

() Any offense \$25.00

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

() Placing snow or ice on a public way (street, sidewalk or bridge)..... \$25.00

() Causing or permitting snow or ice to be placed upon a

public way (street, sidewalk or bridge) \$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. 20-32. Removal of a tree without a permit

()Any offense\$300.00

Sec. 20-33. Failure to comply with a condition contained in a tree removal permit

()Any offense\$300.00

Sec. 20-35. Failure to replace a tree

()Any offense\$300.00

Sec. 20-36. Failure to make a payment into the tree replacement fund

()Any offense\$300.00

Sec. 20-37. 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 for first day
- () Second offense per 365 day period \$50.00 for 2nd day
- () Third offense and subsequent offenses..... \$75.00 for 3rd day and each day thereafter per 365 day period

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

- () First offense per 365 day period written warning for first day
- () Second offense per 365 day period \$50.00 for 2nd day

() Third offense and subsequent offenses..... \$75.00 for 3rd day and each day thereafter per 365 day period

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

() First offense per 365 day period written warning for first day
() Second offense per 365 day period \$50.00 for 2nd day
() Third offense and subsequent offenses..... \$75.00 for 3rd day and each day thereafter per 365 day period

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

() First offense per 365 day period written warning for first day
() Second offense per 365 day period \$50.00 for 2nd day
() Third offense and subsequent offenses..... \$75.00 for 3rd day and each day thereafter per 365 day period

(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)

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—20-30. Reserved.

ARTICLE V. TREE PRESERVATION

Sec. 20-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aggregate diameter: The combined diameter of a multiple trunk tree measured at breast height.

Building: The term "building" shall be as defined in section 30-1.

Certified arborist: An arborist certified by the Massachusetts Arborists Association, or any successor organization.

Diameter breast height (DBH): The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

Drip line: A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

Exempt lot: A lot which meets either of the following criteria at the time that the tree removal permit application is filed or an exterior work permit is sought or at the time that trees are being removed:

- (a) the lot is occupied and used primarily as a dwelling for up to four (4) families; or
- (b) the lot is vacant and is adjacent to a lot used solely as an owner occupied dwelling for up to four (4) families and owned by the same person and the owner of such vacant lot wishes to remove trees from such vacant lot in order to construct a dwelling for up to four (4) families which said owner will occupy.

Exterior work permit: A permit or approval which is required in order to perform work on a vacant lot or to the exterior of a building on a lot, including, but not limited to the following: a building permit; a special permit for grade change of more than three (3) feet pursuant to section 30-5(b)(4); curb cut and street opening permits; an order of conditions; certificates of appropriateness, nonapplicability, or hardship; a demolition permit pursuant to section 22-44; site plan approval pursuant to section 30-23; subdivision approval; a special permit pursuant to section 30-24; a comprehensive permit.

Person: Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a protected tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Newton.

Protected tree: Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land subject to the provisions of section 20-32.

Pruning standards: Standards for pruning as defined in the City of Newton Tree Management Manual, 1995

and any future amendments or revisions to the same.

Remove (including removing and removal): The cutting down of any protected tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a protected tree, including, but not limited to, excessive or improper pruning.

Tree Manual: The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)

Tree Warden: The commissioner of parks and recreation or his designee.

Editor's note—Ordinance V-275 contained a lengthy and detailed Declaration of legislative findings and intent, which is on file in the records of the Board of Aldermen.

Sec. 20-32. Applicability, permit or certificate of exemption required.

(a) *Applicability:* The terms and provisions of this article shall apply to any protected tree located on land within the city not owned by the city, the commonwealth, or any independent authority of the commonwealth, or by the federal government except protected tree(s) located on an exempt lot.

(b) *Permit, certificate of exemption:* No person shall remove a protected tree located on land subject to the provisions of this article without first obtaining a tree removal permit or a certificate of exemption from the tree warden. Applications shall be made in writing on forms specified by the tree warden. An owner of an exempt lot shall not be required to apply for a tree removal permit, provided, however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on forms provided by the tree warden that the owner intends to own such exempt lot for at least twelve consecutive months. There shall be no fee for filing a certificate of exemption. (Ord. No. V-275, 12-6-99)

Sec. 20-33. Permit application.

(a) *Contents, fee:* An application for a tree removal permit shall be submitted to the tree warden. The application for a tree removal permit shall be accompanied by a fee in the amount of fifty dollars (\$50.00) and shall include, but not be limited to, the following:

- (1) The shape and dimensions of the parcel of real property to be developed, together with the existing and proposed locations of structures and improvements, if any;
- (2) A tree plan showing the location, type and size of each protected tree indicating which protected tree(s) are to be removed, and the location, type and size of replacement trees;
- (3) The proposed relocation of any existing protected tree with a statement prepared by a certified arborist explaining how each such protected tree is to be relocated and maintained;
- (4) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
- (5) Any proposed grade changes which might adversely affect or endanger any protected tree with a statement prepared by a certified arborist explaining how each such protected tree shall be protected and maintained;
- (6) The proposed method of protecting the remaining protected trees during the course of the construction in accordance with section 20-34, subsection (a).

(b) *Review of permit applications:* The tree warden shall review applications for tree removal permits in accordance with the provisions of this article. The tree warden shall date stamp or otherwise record the date of filing of each application for a tree removal permit. The tree warden shall complete the review of each tree removal permit application no later than ten (10) business days after the submission of a completed application to the tree warden and shall report to the commissioner of inspectional services within ten (10) business days of a request with respect to any tree removal permit application submitted in connection with a building permit as to whether said tree removal permit has been granted or denied. If no such report is received by the commissioner within the above-stated time period, he shall accept an application for a building permit without receipt of such report.

(c) *Standards for grant or denial:* No tree removal permit shall be issued unless one of the following conditions exists:

- (1) The protected tree will be relocated or replaced on site.
- (2) The protected tree will be replaced by the off-site planting of tree(s) of the same or equivalent size as measured in DBH inches. In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the tree warden, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed. Off-site plantings shall be made in accordance with written priorities established by the tree warden as stated in the Tree Manual. The tree warden may specify that replacement trees be of a minimum caliper when consistent with current accepted practice as stated in the Tree Manual.
- (3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements and the relocation of the protected tree is not feasible as certified to the tree warden by a certified arborist.
- (4) The protected tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon rights-of-way, or poses a threat to pedestrian or vehicular safety.
- (5) The removal of the protected tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the tree warden by a certified arborist.

(d) *Conditions:* Upon the issuance of a tree removal permit, the tree warden may prescribe in writing such protective measures for existing protected trees as he deems necessary. Before site disturbance may begin, the tree warden may make a determination that the prescribed protective measures have been adequately provided.

(e) *Construction:* Except as provided in a tree removal permit, construction activities under the drip line of a protected tree are prohibited. Activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.

(f) *Suspension or revocation:* A tree removal permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this article or the conditions of the permit. The written notice shall be sent by certified or registered mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree removal permit upon compliance, where practicable. The suspension or revocation of a tree removal permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance (granting) of such tree removal permit nor shall such

suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(g) *Appeal*: Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden’s decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each alderman for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal. The mayor or his designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the board of aldermen and to each ward alderman for the ward in which the trees are located. There shall be no further appeal of the matter decided by the mayor or his designee. No protected trees shall be removed while an appeal is pending. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06)

Sec. 20-34. Activities not requiring a permit.

(a) *Pruning*: A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with approved pruning standards is required, and failure to meet these standards is a violation of this article. The tree warden shall maintain on file at all times a copy of the current edition the Tree Manual and shall make copies of the Tree Manual available for the cost of reproduction upon request.

(b) *Emergencies*: If any protected tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the tree warden to remove such tree, utilizing such professional criteria and technical assistance as he deems necessary, and the protected tree may be removed without obtaining a written permit as otherwise required by this article. The tree warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.

(c) *Waiver*: The requirements of this article may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God. (Ord. No. V-275, 12-6-99)

Sec. 20-35. Tree replacement.

(a) *Required*: A protected tree shall be replaced in the manner provided in subsection (b) hereof in each instance in which a protected tree was removed from land subject to the provisions of section 20-32 without a tree removal permit.

(b) *Standards*: A person who has removed a protected tree and is required to replace such tree pursuant to subsection (a) hereof or as a condition of granting a tree removal permit in accordance with section 20-33, shall replace such tree within one year from the date of removal and in accordance with the following standards:

- (1) A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden in accordance with the Tree Manual and shall have the same or equivalent size as measured in DBH inches as that of the protected tree that has been removed.
- (2) In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the tree warden, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed. The tree warden may specify that replacement trees be of a minimum caliper when consistent with current accepted practice as stated in the Tree Manual.
- (3) A replacement tree shall be required to survive for a minimum of one (1) year from the date it is planted.

The person planting the tree shall provide documentation as to the date of planting and file the same with the tree warden within fifteen (15) days of the planting of said replacement tree.

- (4) A replacement tree shall be planted on the same lot from which the tree was removed or at a location determined by the tree warden in accordance with the priorities stated in the Tree Manual. (Ord. No. V-275, 12-6-99)

Sec. 20-36. Tree replacement fund.

(a) *Established:* There is hereby established a tree replacement fund which shall be held in a separate identifiable account and administered in accordance with applicable provisions of the General Laws. Any payments into the tree replacement fund required by this article shall be deposited in the tree replacement fund and shall be used in accordance with subsection (c) hereof.

(b) *Payment in lieu of planting replacement tree(s):* In lieu of planting a replacement tree as provided in section 20-35, a person who has been granted a tree removal permit may make a contribution to a tree replacement fund in an amount equal to the cost to replace the tree in accordance with the provisions of section 20-35, which cost shall be determined by the tree warden who shall obtain written estimates from at least two (2) tree companies.

(c) *Maintenance of tree replacement fund:* The tree replacement fund shall be maintained in a separate account in accordance with state law. All sums deposited into such fund shall be used solely for the purpose of buying, planting and maintaining trees in the city. (Ord. No. V-275, 12-6-99)

Sec. 20-37. Enforcement.

(a) *Notice of violation:* Any person who violates any of the provisions of this article shall be notified by the tree warden of the specific violation by certified or registered mail, return receipt requested, or by hand delivery. The notice shall set forth the nature of the violation and a reasonable time period within which compliance must be had. The tree warden shall send notice of violation of section 20-32, subsection (c), which notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the "per day" violation fine, as provided in section 20-38, subsection (b).

(b) *Stop work order:*

- (1) Upon notice from the tree warden that work on any protected tree, or lot on which a protected tree is located, is being performed contrary to the provisions of this article, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.
- (2) The tree warden is also authorized to request the agency which has granted an exterior work permit to order, to the extent permissible by law, that the owner cease any activity pursuant to the exterior work permit that might affect such protected tree while a stop work order is pending.
- (3) Any person who shall continue any work in or about the protected tree or lot on which a protected tree is located after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than three hundred dollars (\$300.00) for each such violation. Each day during which a violation exists shall constitute a separate offense.

(c) *Injunctive relief:*

- (1) Whenever there exists reasonable cause to believe that a person is violating this article or any standards adopted pursuant to this article or any term, condition or provision of an approved tree removal permit, the city may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- (2) Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this article. (Ord. No. V-275, 12-6-99)

Sec. 20-38. Penalties.

(a) *Removal without a permit:* Each instance in which a protected tree is removed without a permit shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00).

(b) *Failure to replace trees or make payment:* Each failure to replace a tree or make a payment into the tree replacement fund shall constitute a separate violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(c) *City trees:* Nothing herein shall be construed to require the city to make a payment into the tree replacement fund for any tree(s) which it removes. (Ord. No. V-275, 12-6-99)

Sec. 20-39. Severability, effect on other laws.

(a) *Severability:* The provisions of this article are severable. If any section, provision, or portion of this article is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this article shall continue to be valid.

(b) *Conflict of laws:* This article shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special permit procedures as provided in section 30-24 and to the extent that any provision hereof conflicts with said special permit procedures, such provision shall not be valid. (Ord. No. V-275, 12-6-99)

ARTICLE VI. FENCES

Sec. 20-40. Regulation of Perimeter Fences.

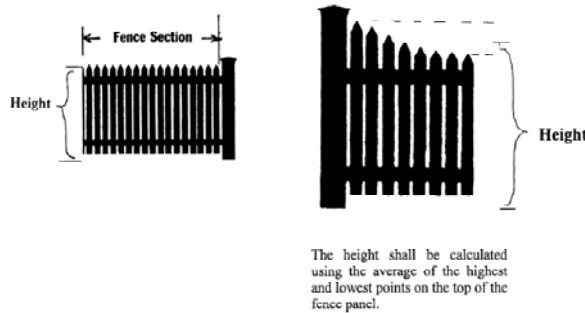
(a) *Purpose:* The purpose of this section is to establish criteria for the location, appearance and maintenance of perimeter fences. The intent is to regulate the location and type of fences in order to promote and to protect the open and natural characteristics of Newton streetscapes and neighborhoods, the unencumbered passage of pedestrians on city sidewalks and to assure the safe visibility of both pedestrians and motor vehicular traffic.

(b) *Definitions:* As used in this section, the following terms shall be defined as set forth herein, unless otherwise stated:

Appropriate Materials: Materials normally manufactured for, used as, and recognized as fencing materials, including but not limited to, wrought iron or other decorative metals suitable for the construction of fences, fired masonry, concrete, stone, wood, vinyl and chain link. Such materials must be suitable for exterior use and weather and decay-resistant, provided that this requirement shall not prevent the use of wood that is untreated or unpainted.

Fence: Any permanent partition or barrier more than twelve (12) inches in height from the natural grade (or the top of a retaining wall if a fence is placed on such wall) bordering or parallel to and within five (5) feet of a lot line that in whole or in part defines the boundaries of said lot. A retaining wall or landscaping material such as hedges shall not be considered a fence. Fences located within the interior of a lot which do not serve to define a lot boundary, such as, but not limited to, fences that enclose dog runs, play areas, pools, tennis courts, etc., are not subject to regulation pursuant to this ordinance except for any portion of such fence that borders or is parallel to and within five (5) feet of a lot line.

Height: The vertical distance measured from the natural grade of the ground at the location where the fence is erected (or from the top of a retaining wall if a fence is placed on such wall) to the top of the fence section or panel. Fence supports such as posts, columns, piers or pilasters, as well as gates and arbors may exceed the height restriction contained in this ordinance by not more than twenty-four (24) inches. In cases where the top of the fence section or panel is curved, the height shall be calculated using the average of the highest and lowest points on the top of the fence section or panel as illustrated in the diagram below.



Lot Line: The division line between individual lots established by a plan filed in the registry of deeds, except that the line between land of the commonwealth used as an aqueduct or land formerly an aqueduct now owned by the city and adjoining land shall not be termed a lot line.

Lot Line, Front: A lot line that borders a public or a private way.

Lot Line Rear: The lot line that is opposite the front lot line. In the case of corner lots as defined in Section 30-1 of the Revised Ordinances, as amended, the rear lot line shall be the lot line opposite the street faced by the main entrance of any house located on the lot.

Lot Line, Side: Any lot line that is not a front or rear lot line.

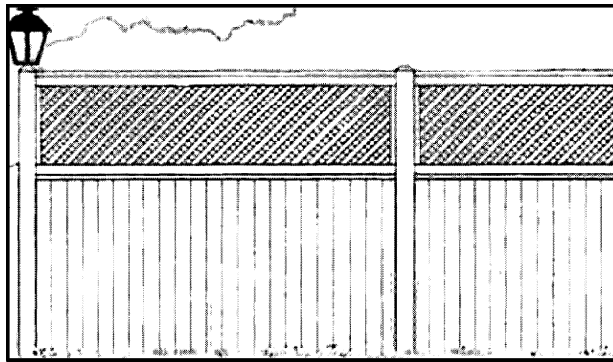
Legal Nonconforming Fence: Any fence that does not conform with the requirements of this ordinance shall be considered nonconforming. Fences erected prior to July 1, 2004 that do not conform with the requirements of this ordinance shall be considered legal nonconforming fences.

Repair: Routine maintenance, such as painting, or replacement of less than 50% of the length of a fence along any property line with in-kind material. Replacement of 50% or more of the length of a fence along any property line shall constitute a new fence.

(c) *Requirement of a Permit:* Any person erecting a perimeter fence greater than four (4) feet in height shall first obtain a fence permit from the Commissioner of Inspectional Services. Any person seeking to repair an existing fence shall not be required to obtain a fence permit. The Commissioner of Inspectional Services shall issue the fence permit if he or she finds that the proposed fence complies with all the requirements of this ordinance. An individual who has been denied a fence permit by the Commissioner may appeal such denial to the Urban Design and Beautification Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design and Beautification Commission shall issue the fence permit if the Commission determines that the proposed fence complies with the requirements of this ordinance, or if owing to conditions especially affecting a particular lot compliance with the provisions of this ordinance would involve substantial hardship.

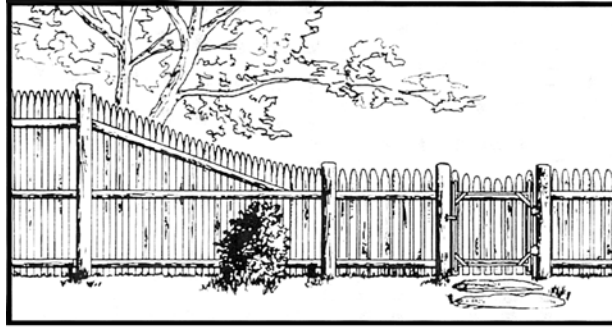
(d) *Regulation of Perimeter Fences in Residential Zoning Districts:*

The height of perimeter fences located in residential zoning districts shall be regulated as follows:



Example of a perimeter fence with an open top

- (1) Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line.
- (2) Fences bordering side lot lines: No fence or portion of a fence bordering or parallel to a side lot line shall exceed six (6) feet in height except as provided in subsection (6) below, and further, that any portion of a fence bordering a side lot line which is within two (2) feet of a front lot line shall be graded to match the height of any fence bordering the front lot line.
- (3) Fences bordering the rear lot line: No fence or portion of a fence bordering or parallel to a rear lot line shall exceed six (6) feet in height, provided, however, that the height of a rear lot line fence may be increased to a maximum of eight (8) feet if no portion of such rear lot line constitutes a side lot line for an adjoining lot or as provided in subsection (6) below.



Example of graded fence

(4) Limited access highway fences:

Regardless of whether the fence is located along a front, side or rear lot line, fences abutting Route 128, or the Massachusetts Turnpike, may be increased to a maximum of twelve (12) feet in height.

(5) Fences bordering side or rear lot lines that immediately abut an MBTA or Commuter Rail line may be increased to a maximum of eight (8) feet in height.

(6) Fences bordering side or rear lot lines where the entire length of said side or rear lot lines immediately abut nonresidential or public use zoning districts may be increased to a maximum of eight (8) feet in height.

(7) Any fence located on top of a retaining wall must meet the height and setback requirements in subsection (d) above.

(e) *Regulation of Perimeter Fences in Nonresidential Zoning Districts:* The height of perimeter fences located in nonresidential zoning districts including fences erected by the City of Newton in the public use districts shall not exceed eight (8) feet in height except as necessary for athletic facilities such as, but not limited to softball diamonds or tennis courts which may be permitted at heights in conformance with established recreation standards.

(f) *Regulations Applicable to All Perimeter Fences:* The following regulations shall be applicable to all perimeter fences, including those erected by the City of Newton, regardless of the zoning district in which the fence is located.

(1) All fences must be positioned so that a finished side of the fence faces away from the lot on which it is constructed. Fences should follow the natural contours of the ground and shall be made of appropriate materials.

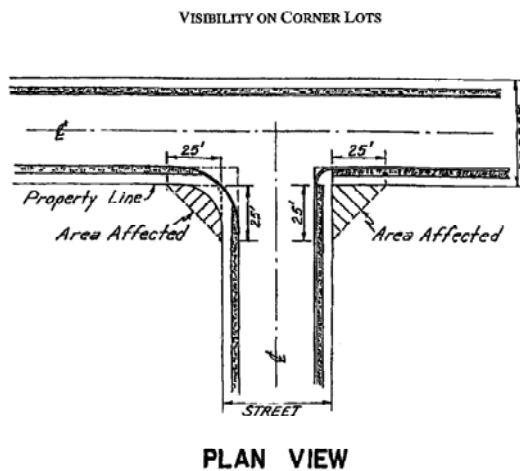
(2) No fence shall be constructed wholly or in part of barbed wire or razor wire. There shall be no sharp prongs on the top of a chain link or similar fence and all such prongs shall be either meshed or turned over.

(3) A legal nonconforming fence may be repaired. Restoration of said fence with materials different from the materials of the original fence and reconstruction or replacement of the entire fence with the same or different materials shall not be considered a repair, but shall be considered the erection of a new fence that must comply with the requirements of this ordinance.

(4) Fences located in a local historic district must receive a Certificate of Appropriateness, Non-Applicability

or Hardship from the local historic district commission prior to submitting an application for a fence permit.

- (5) Fences located in a wetland area may be subject to additional regulations and must be reviewed by the Conservation Commission prior to submitting an application for a fence permit.
- (6) Scenic Road Fences. In order to maintain the character of all designated scenic roads, no stockade fences or other fences with solid sections or panels excepting stone fences shall be permitted bordering or parallel to the front lot line along a designated scenic road. Notwithstanding the height regulations set out in subsections (d) and (e) above, no fence bordering or parallel to a front lot line along a designated scenic road may exceed four (4) feet in height above the natural grade.*
- (7) Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section 30-1 of the Revised Ordinances, as amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets as illustrated in the diagram below. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer.



(g) *Exemptions for Certain Types of Perimeter Fences:*

- (1) Temporary or Construction Fences: A temporary or construction perimeter fence not exceeding six (6) feet in height or such other height as may be required by the State Building Code may be erected without a fence permit for the period of the event requiring the temporary fence or for the duration of construction.

* **Editor's note:** As of the passage of this ordinance there are 17 designated Scenic Roads in Newton: Woodland Road, Hancock Street, Grove Street, Concord Street, Fuller Street, Valentine Street, Highland Street, Waban Avenue, Woodcliff Road, Lake Avenue, Sumner Street, Hobart Road, Dudley Road, Mill Street, Hammond Street, Chestnut Street and Brookside Avenue.

- (2) **Protective Measure Fence:** A perimeter fence that does not comply with this ordinance may be erected in the interest of public safety and to protect an enclosed area and the property therein or to deny access to a potentially dangerous property or location if, at the time a fence permit is requested, the Commissioner of Inspectional Services determines that a fence that complies with the regulations of the ordinance does not provide the required public safety, security or protection. An individual who has been denied a fence permit for a protective measure fence by the Commissioner may appeal such denial to the Urban Design and Beautification Commission in accordance with the procedure for such appeals established by the Commission. The Urban Design and Beautification Commission shall issue the fence permit for the protective measure fence if the Commission determines that the proposed fence is necessary to provide the required public safety, security or protection.
- (3) Should there be any conflict between the requirements of this section and the relevant provisions of the State Building Code as most recently promulgated in 780 CMR 421.10 (6th ed.) which require a barrier enclosing an outdoor private swimming pool measuring at least 48 inches above finished ground level, the State Building Code shall prevail.

(h) *Exceptions:* The Urban Design and Beautification Commission may grant exceptions to the provisions of this ordinance in accordance with the procedures and criteria for such exceptions established by the Commission where it determines that owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise, to the individual requesting the exception, and the desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good.

(i) Nothing in this ordinance shall relieve any person erecting a fence from compliance with any other applicable statute, ordinance or regulation, including but not limited to, the State Building Code, (780 CMR), G.L. c. 49, and Chapter 30 of the Revised Zoning Ordinances, as amended.

(j) *Penalty:* Whoever violates any of the provisions of this ordinance shall be punished by a fine of not more than fifty (\$50) dollars for each day during which the violation continues. 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 violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in section 20-21(c).

(k) *Enforcement:* The Commissioner of Inspectional Services shall enforce all provisions of the ordinance, including instituting all necessary administrative or legal action to assure compliance therewith. Any person found to be in violation of the ordinance shall receive a written warning and a minimum of thirty (30) days to remediate all violations thereof prior to the institution of any enforcement action by the Commissioner. (Ord. No. X-93, 06-21-04)

Secs. 20-41—20-49. Reserved.

ARTICLE VII. MISCELLANEOUS

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 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)

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. Excavations; protection, erection of barriers.

Every owner of land that has been excavated shall, within five (5) days after being notified in writing by the mayor and the board of aldermen, acting by its president pursuant to a vote of the board, that in their opinion such excavation constitutes a hazard to public safety, erect barriers or take other suitable measures to eliminate such hazard. Whoever violates the provisions of this section shall be liable to a penalty not exceeding two hundred dollars (\$200.00) for each offense. (Rev. Ords. 1973, § 14-4; Rev . Ords. 1995, § 20-4)

Cross references—Buildings, Ch. 5; city engineer, Ch. 25, Art. II; public works department, Ch. 25; streets and sidewalks, Ch. 26

State law reference—Authority to require protection of excavations, G.L. c. 40, § 21(19)

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. Soil, loam, sand or gravel; removal.

(a) No person shall remove any soil, loam, sand or gravel from any land in the city not in public use except in conjunction with the construction or alteration of a building or structure on the same lot for which a building permit shall have been issued, or for grading of the lot reasonably incidental to such construction or alteration; for the construction of a private way in accordance with a subdivision plan approved by the planning board; in conjunction with the continued operation on the same lot of an existing sand and gravel pit authorized under the provisions of chapter 30 of the Revised Ordinances; or unless such removal is authorized by a permit issued pursuant to a vote of the board of aldermen upon a written application therefor filed with the city clerk. The board of aldermen may but shall not be required to hold a public hearing on such application, on such notice as they shall determine to be sufficient.

(b) No building permit shall be issued by the commissioner of inspectional services in any single residence district

or in a multi-residence 1, 2 or 3 district if the area of the lot is in excess of one and one-half (1½) times the minimum lot size required in that district, in a multi-residence 4 district if the area of the lot is in excess of thirty thousand (30,000) square feet or in any business or manufacturing district if the area of the lot is in excess of fifteen thousand (15,000) square feet, unless the applicant files an affidavit that no soil, loam, sand or gravel will be removed from the lot except as provided in this section.

(c) In determining the size of a lot for the purposes of this section, there shall be included the area of any adjoining lot with respect to which a building permit has been issued but not exercised to the point of substantial completion of the foundation or with respect to which an application for a building permit has been filed but has not been acted upon or withdrawn.

(d) This section is enacted pursuant to the provisions of chapter 40, section 21, clause 17 of the General Laws and the penalties prescribed thereby shall attach to violations of this section. This section is in addition to and not in substitution for the provisions of chapter 30 of these revised ordinances. (Rev. Ords. 1973, § 14- 10; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88; Rev . Ords. 1995, § 20-10)

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, § 26-20

Secs. 20-64. – 20-69. Reserved

Article VIII. VACANT BUILDINGS

Sec. 20-70. Regulation of Inadequately Maintained Vacant Properties

(a) *Purpose:* The purpose of this ordinance is to help protect the health, safety and welfare of the citizens by preventing blight, protecting property values and neighborhood integrity, protecting the City’s resources, avoiding the creation and maintenance of nuisances and ensuring the safe and sanitary maintenance of dwellings. Inadequately maintained vacant buildings are at an increased risk for fire, unlawful entry, and other public health and safety hazards. This ordinance will help secure the welfare of the City’s residents and neighborhoods by requiring all residential property owners, including lenders, trustees, and service companies and alike, to properly maintain vacant residential properties.

(b) *Definitions:*

Commissioner: commissioner of the inspectional services department.

Owner: every person, entity, service company, property manager or real estate broker, who alone or severally with others:

- (1) has legal or equitable title to any dwelling, dwelling unit, or parcel of land, vacant or otherwise; or
- (2) has care, charge or control of any dwelling, dwelling unit, parcel of land, vacant or otherwise, in any capacity including but not limited to agent, executor, executrix, administrator, administratrix, trustee or guardian of the estate of the holder of legal title; or
- (3) is a mortgagee in possession of any such property; or
- (4) is an agent trustee or other person appointed by the courts and vested with possession or control; or
- (5) is an officer or trustee of the association of unit owners of a condominium; each such person is bound to comply with the provisions of these minimum standards as if he were the owner; or
- (6) is a trustee who holds, owns or controls mortgage loans for mortgage backed securities transactions and has initiated a foreclosure process.

Property: any real, residential property, or portion thereof, located in the city of Newton, including buildings or structures situated on the property. For purposes of this section, property does not include property owned or subject to the control of the city or any of its governmental bodies.

Residential Property: any property that contains one or more dwelling units used, intended, or designed to be occupied for living purposes.

Vacant property: any residential property that is unoccupied for a period greater than one hundred eighty (180) days by a person or persons with legal right to reside therein.

(c) *Requirements for adequate maintenance:* owners of vacant properties, as defined in section (b), must fulfill the following minimum adequate maintenance requirements for any such property they own:

- (1) Maintain vacant properties subject to this section in accordance with the relevant sanitary, building, and fire codes.
- (2) Secure vacant properties subject to this section to prevent unauthorized entry and exposure to the elements.
- (3) Maintain vacant properties subject to this section in accordance with regulations promulgated by the commissioner pertaining to the external/visible maintenance of the property, including but not limited to

the maintenance of major systems, the removal of trash and debris, and the upkeep of lawns, shrubbery, and other landscape features.

- (4) Repair or replace broken windows or doors within thirty (30) days. Boarding up any doors or windows is prohibited except as a temporary measure for no longer than thirty (30) days.
- (5) For properties vacant for six months or more, whose utilities have been shut off, remove or cut and cap such utilities to prevent accidents.
- (6) Compliance with this subsection shall not relieve the owner of any applicable obligations set forth in any other codes, regulations, covenant conditions or restrictions, and/or homeowner or condominium association rules and regulations.

(d) *Notice of failure to adequately maintain vacant property:* Upon identifying a vacant residential property as failing to meet the minimum maintenance requirements set out in section (c), the commissioner will notify the owner in writing of maintenance deficiencies at the owner's last known address. If any maintenance deficiency is not corrected within 30 days of said notice, or if a maintenance plan is not approved by the commissioner within 30 days of said notice, the commissioner may impose the fines described in section 20-70(f).

(e) *Inspections:* The commissioner of inspectional services, the commissioner of health and human services, the chief of the police department and the chief of the fire department or their designees shall have the authority to periodically inspect any property subject to this section for compliance. The commissioner shall have the discretion to determine when and how such inspections are to be made, provided that the time and manner of such inspections are reasonably calculated to ensure that this section is enforced.

(f) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with a maintenance plan approved by the commissioner, shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Where non-criminal disposition of specified sections of this section by civil fine has been provided for in sections 20-20 and 20-21 of these revised ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violation may be enforced in the manner provided in such statute. The civil penalty for each such violation is set forth in section 20-21(c).

(g) *Enforcement:* The commissioner or his designee shall enforce all provisions of this section; including any regulation promulgated hereunder, and shall institute all necessary administrative or legal action to assure compliance.

(h) *Regulatory Authority:* The commissioner has the authority to promulgate rules and regulations necessary to implement and enforce this section.

(i) *Severability:* If any provision of this section is held to be invalid by a court of competent jurisdiction then such provision shall be considered separate and apart from the remaining provisions, which shall remain in full force and effect. (Ord. No. Z-60, 12-21-09)

Sec. 20-71. Regulation of Scenic Roads.

- (a) Role of the planning and development board. The planning and development board (hereafter planning board) is authorized to promulgate rules and regulations to implement its administration of scenic roads under the provisions of section 15C of Chapter 40 of the General Laws.
- (b) *Enforcement and Penalties*

- (1) *Failure to obtain approval of the planning board.* Failure to obtain approval of the planning board prior to cutting or removing trees, or tearing down or destruction of stone walls, or portions thereof, within the layout of a designated scenic road shall require the immediate filing of an application with the planning board and shall be subject to restoration of the features or other remediation plan, as the planning board may order. Work under an approved remediation plan must proceed in good faith continuously until completion by any time limit required in the plan, unless amended in writing by the planning board.
- (2). *Penalties.* Each violation of section 15C of Chapter 40 of the General Laws, or of any rule and regulation pertaining to scenic roads shall be punished by a fine of three hundred dollars \$300.00; each tree cut or stone wall removed and each day such violation continues shall constitute a separate offense. The commissioner of inspectional services may revoke or withhold any current or pending permit on the property associated with said violation.
- (3) *Enforcement.* The commissioner of inspectional services and the tree warden shall each have authority to enforce the provisions of this section upon request of and on behalf of the planning board, and shall keep the planning board apprised of the status of any such enforcement. Any person found to be in violation of this section shall receive a written warning and a minimum of thirty (30) days to remediate all violations or to enter into a planning board approved remediation plan prior to the institution of an enforcement action. Unless amended by the planning board, failure to comply with an approved remediation plan, including failure to proceed in good faith continuously until its completion, may result in an immediate enforcement action. (Ord. No. Z-67, 06-21-10)