



Programs & Services Committee Report

City of Newton In City Council

SPECIAL MEETING

Monday, March 7, 2016

Present: Councilors Rice (Chair), Leary (Vice Chair), Hess-Mahan, Kalis, Schwartz, Auchincloss and Baker

Absent: Councilor Sangiolo

Also Present: Councilors Norton, Lapping, Danberg, Yates, Lennon, Ciccone, Gentile, Fuller, Crossley, Harney, Cote, Blazar, Brousal-Glaser and Albright

City Staff: Karyn Dean (Committee Clerk)

#31-15 **Proposing an ordinance to limit leaf blower use**
PROGRAMS & SERVICES COMMITTEE proposing an ordinance to limit the use of leafblowers. [01/26/15 @ 2:20 PM]

Action: **Held 7-0**

#31-15(2) **Amend Noise Ordinance restrictions for yard maintenance equipment**
THE PROGRAMS & SERVICES COMMITTEE requesting to amend *Chapter 20-13, Noise Control*, relative to time restrictions on the use of yard, garden or grounds maintenance equipment. [03/19/15 @ 12:14 PM]

Action: **Held 7-0**

Note: Please note that both items were included in this discussion. Councilor Rice explained that the Programs & Services Committee has been working on a proposed leaf blower ordinance within the current noise ordinance over the past 15 months and wanted to provide an opportunity for other members of the City Council to review the proposed ordinance, offer feedback and suggestions and have questions answered by Committee members.

Councilor Leary explained that in order to create a fair draft ordinance, the Programs & Services Committee elicited and received information and feedback from other communities, experts in the landscaping community, institutions such as colleges and universities and other large parcel stakeholders such as golf courses, as well as from hundreds of residents and members of the public. Every effort has been made to be as thorough as possible in getting data as well as different points of view from as many as possible.

Councilor Leary provided an overview of the proposed ordinance with the recommendation of the Programs & Services Committee. The draft ordinance was attached to the agenda along with a summary of the proposed changes and comments of various stakeholders who were involved in the conversation over the past year or so. Those documents may be found online at:

<http://www.newtonma.gov/civicax/filebank/documents/73748/03-07-16%20Programs%20&%20Services%20Agenda.pdf>

Questions and Comments

Exemptions

There was some confusion about whether exemptions would be allowed for large parcels or for the City. Councilor Leary explained that the current waiver and exemption process in the noise ordinance would apply and the Committee discussed requiring submission of an operations plan for properties of 5 acres or more, although that was not decided. The operations plan would require explanation of the need for leaf blower use as opposed to some other type of equipment. Anyone may apply for a waiver, however, not just large parcel owners. The current noise ordinance waivers are reviewed and approved by the Mayor's office and that provision would apply.

Several Council members felt that if exemptions were going to be made, they needed to be very specific and if there were going to be many exemptions perhaps this was not a good piece of legislation. It was noted that Woodland Golf Club is one of the most egregious violators of the noise ordinance. Calls to the Police Department have not provided any relief and it was doubtful whether any citations had been given to them. There was no desire to offer an exemption clause for them. Overall, the Council member felt exemptions were a bad idea and did not want to see them allowed. If this was a good piece of legislation then the City should abide by it like everyone else.

Some Councilors were also unsure whether the exemptions should be granted through the Mayor's office. Many Councilors felt exemptions should not be granted for the City or other large property owners as that would be unfair to the residents who have to abide by the ordinance.

A Councilor did not think an administrative requirement to review an operations plan made sense and there should be some standards as opposed to a "rationale" as to why a property owner would need to use a leaf blower and be granted a waiver. Councilor Hess-Mahan agreed that some objective criteria would make it easier to determine whether a waiver should be granted. A City wide exemption could also be granted to address weather issues in any given year, for example, severe winters or early springs.

Councilor Hess-Mahan explained that there was not a decision in Committee to exempt parcels based on size. The decision was to use the current waiver provision in the ordinance, which allows anyone to apply for a waiver, not just large property owners. He understood the desire to offer no exemptions and would take that into consideration.

Equipment

A Councilor said that there was no viable replacement of the equipment in order to deliver the landscaping services. If there was, the landscapers would be using that equipment instead. Any landscaper with a contract with the City would have an advantage over those that did not and they could be put out of business. The Councilor also asked if leaf blower manufacturers came in to speak to the Committee. He was concerned that electric leaf blowers would not be cost effective for contractors and employing people to rake would not be feasible. Another Councilor said that electric blowers will not blow heavy, wet leaves.

Councilor Leary explained that landscapers did come in and speak to the effectiveness of the equipment they use and why they use it, but not manufacturers. The Committee wanted to know what the professional landscapers were using for equipment and why and reviewed the noise level and the power the contractors testified was needed to do their job. They claimed that 65dB equipment was not powerful enough to move wet, heavy leaves and they regularly use 77dB machines in most circumstances. There was a representative from a landscaping company who used electric blowers and he said his lower dB machines worked just as well. A Councilor thought there might be other equipment in the pipeline with improved technology which combines power with a quieter engine.

Decibel Levels

A Councilor pointed out that most contractors and homeowners using leaf blowers are using machines at 77dB. It was noted that the Council needed to listen to those using the equipment who are saying they need the more powerful equipment to do their job and the current ordinance is being violated for seemingly good reason. She felt the ordinance should go to the 77dB level, however, restrict summer use to 65dB.. This could be reviewed in a few years to see if technology has improved. Another Councilor suggested the dB level could be legislated over a period of time.

There was some confusion over decibel levels. Councilor Hess-Mahan explained that decibels are calculated in a logarithmic manner. For example, 75dB is 10 times louder than 65dB; and 75dB is 100 times louder than 55dB.

Ordinance Alternative

One of the Councilors found the proposed ordinance too complicated to understand and was also concerned that the same would be true for landscaping contractors. They would then be required to hire legal counsel in order to apply for waivers and that would be an unfair financial burden. He would not like to see any change to the current ordinance.

The Councilor, however, liked the proposal that Attorney Stephen Buchbinder had submitted earlier which removed the summer ban, raised the current dB level from 65 to 77, and allowed earlier start times. Councilor Leary explained that the noise ordinance was amended in 2008. At that time the allowable dB level for leaf blowers was 80. The amendment allowed for a 4-year

phased step-down with 2 years at 75dB and 2 years at 70dB leading to 65dB. People have known since 2008 that the dB level for leaf blowers would be 65.

Councilor Leary explained that the point of the proposed ordinance is to try to find a middle ground to provide some noise relief, particularly during the summer months, for residents. Since leaves are on the ground in the fall and spring, the ordinance allows leaf blower use during those seasons. But in the summer when there are no leaves to clear, some noise relief would be logical and welcome. They would like to improve quality of life for all residents and many residents testified very passionately about how leaf blowers have been making life miserable. They are looking for a balance to help those residents and not have too significant an impact on the landscapers businesses. Considering this, the Committee is in favor of maintaining the 65dB level and imposing a summer ban.

Summer Ban Dates

Some Councilors wondered if there would be any flexibility on the summer ban dates if the weather warranted it. Last year saw a long and late winter; this year has been relatively mild and the dates may need to be fluid in order to accommodate those shifts. The Councilor also felt the start times should follow the start times for construction work for simplicity.

A Councilor said that many people want to use blowers in the summer, for good reason and for short periods of time and using another method would be difficult. It was pointed out that Commissioner DeRubeis had reported that the Parks & Recreation Department use leaf blowers all summer.

Several Councilors were against a summer ban at all saying the noise could be mitigated by better enforcement and limiting the number of blowers per lot.

Time of Day Restrictions

A Council member did not think it made sense to have leaf blower use start at a later time when construction work was allowed at an earlier time.

Enforcement

A Council member explained that he would like to look more closely and seriously at having the current ordinance enforced instead of making changes. There is new leadership in the Newton Police Department and a conversation with Chief MacDonald would be in order. There has not been much will in the past to enforce the ordinance, but perhaps that could change in terms of enforcing noise levels, times allowed, etc. Now that the community has seen that there is serious intent to deal with the problem and the prospect of an ordinance change has been put forward, there should be better compliance.

Other Councilors noted that there may be not be enough staff in the Police and Inspectional Services Departments in order to enforce the ordinance as it is. Others felt the proposed ordinance would be difficult to enforce as well. An ordinance should not be passed than cannot be enforced.

If the enforcement authorities needed to write a report to share with the complainant, then they might be more interested in tracking down the offender and giving a ticket rather than having to write a report.

Councilor Baker explained that the manufacturer's sticker on the leaf blower is a much easier way for a police officer to know if the ordinance is being violated, as opposed to going to the Police Station to get a decibel meter and then return to take the decibel reading and interpret it.

Councilor Hess-Mahan noted that when the Police Department came in to Committee to discuss this they expressed the need for an ordinance that would be simple to enforce such as a seasonal ban with very specific dates and times.

The Inspectional Services Department was improperly reading the decibel meter when doing readings of leaf blowers by adding the level of the ambient noise. As mentioned earlier, this is not how decibel levels work.

Leaf Blowers Per Parcel

Some Councilors wondered why the limit was set at one blower per 10,000 square feet of a lot. Councilor Leary said this would protect more residents from the leaf blower noise. There was some debate from Councilors as to what would be the correct number; it could be 7,500 and some were in favor of that. Many times the problem is with a team of workers running several machines at one time and this provision would prevent that.

Registration

Several Councilors did not feel the registration process was necessary or practical and was just another bureaucratic step without much value. There did not seem to be enough staff in the Clerk's office to undertake the registration. A Councilor would like to see how much this would cost to administer and what the fee to the contractors would be as well.

Councilors Leary and Baker explained that the registration is designed to aid in enforcement. A sticker would be given for the contractors trucks so that police could easily discern if they were registered and following the ordinance. The contractors would receive a copy of the ordinance and best practices so they were aware of the law. This was going to be done in coordination with Newton Leaves and the local landscapers. A fee would be charged to cover the costs involved in administering the registration process.

Quality of Life/Health Issues

Councilor Baker said it was extremely helpful and useful to get feedback from all the Councilors. He understands the challenges the landscapers might face in their work, however, the point of this is to balance the quality of life issues of the residents who have been articulating their great distress. The health and welfare of all who have to listen to the noise and breath in the dust and particulate matter that is being blown around is at the heart of this and the Committee has been

working diligently to consider the needs of the landscapers and the needs of those who are bothered by the machines.

A Council member also mentioned the very serious health issues involved with the use of machines. There is a large amount of data and science related to the use of machines and that needs to be taken into consideration and there is very deep dissatisfaction from many residents.

Councilor Schwartz also agreed with the serious health issues. While he understands all the practical issues of the ordinance which have been mentioned, the health concerns are real. The EPA and other organizations have set levels for safe sound exposure and other health concerns. If this is viewed as a health problem as well as a quality of life problem, then it seems everyone should work hard to make it work and accept some of the costs.

Councilor Hess-Mahan noted that when the City came up with a new set of noise limits for the ordinance, they relied on OSHA, EPA and other state and federal agencies as well as what other municipalities allowed. They wanted to be sure people who used the machines, and people who lived in the City were protected from excessive noise.

General Comments

Councilor Blazar, a former Programs & Services Committee member noted that the Committee has worked long and carefully on these provisions. He recommended that any Councilors with questions talk to him, current Committee members as well as former Committee member Councilor Norton to answer questions and concerns. The current ordinance is not working for those residents who are terribly bothered by noise, and does not work for those trying to enforce the ordinance. Something needs to change and he urged cooperation with the full Council to seek information from the Committee members.

A Council member asked how snow blowers and lawn mowers get away the noise levels they produce. It was mentioned that was not part of this docket item, but if they are violating the noise ordinance they are subject to the same enforcement and penalties as any other violation. Councilor Leary said she could not speak for others, but she has never received a single complaint about the noise conducted by lawn mowers or snow blowers, but has received many, many complaints over a long period of time about leaf blower noise.

Councilor Norton, former member of the Committee, hoped the Council could take a "yes, we can" outlook on this. The issues may be divisive and difficult but there are real concerns in the community from small business owners other than the landscapers. These are people that work at home, people who have small children, or who are ill, or who just want to enjoy the quiet of their home. Compromise can be found and it is not unreasonable to suggest that leaf blowers do not need to be used when there are no leaves falling. A nice quiet summer is a reasonable request that people have made.

Next Steps

Councilor Rice thanked everyone for their comments and feedback and expressed appreciation from the Committee. He explained that the Committee will determine a timeframe for a final draft proposal at their next meeting or possibly the one after that.

Meeting adjourned.

Respectfully Submitted,

John B. Rice, Chair