

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, SEPTEMBER 30, 2015

Present: Ald. Sangiolo (Chairman), Rice, Blazar, Leary, Baker and Kalis

Absent: Ald. Hess-Mahan and Norton

Also Present: Ald. Harney and Ciccone

City Staff Present: Karyn Dean (Committee Clerk)

REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES

#141-15(3) **PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEE**
requesting a RESOLUTION from the Board of Aldermen to His Honor the Mayor requesting that he, on behalf of the city, complement ongoing discussion with National Grid by preparing and filing litigation to recover damages and appropriate remediation and prevention relating to harm to City trees from gas leaks from National Grid infrastructure. [07/15/15 @8:30 PM]

APPROVED BY PUBLIC FACILITIES 7-0 ON 9/9/15

ACTION: APPROVED 5-0 (Ald. Baker not voting)

NOTE: The Programs & Services Committee met jointly with the Public Facilities Committee on July 15 to discuss gas leaks. In that meeting, both committees proposed a resolution to the Mayor requesting that he pursue litigation against National Grid to recover damages for City trees that have been damaged or killed as a result of gas leaks in their infrastructure. This has been an issue in the City for a number of years and negotiations with National Grid have resulted in no progress. The hope is that filing litigation will elicit a better response. This item is the result of that proposal and the Public Facilities Committee voted to approve the resolution on September 9th.

The Law Department is in initial conversations with National Grid. Brookline filed suit with National Grid a couple of years ago for gas leaks and tree deaths which is still pending.

Ald. Leary explained that she also docketed a related request for a resolution supporting a proposed bill before State legislature that seeks to protect consumers of gas and electricity from paying for leaked and unaccounted for gas. The bill seeks to prohibit gas providers from charging consumers for gas that is unaccounted. It was explained that the proposed bill is meant to provide incentive to the gas providers to repair their infrastructure for which they may increase rates to diminish their losses and develop improved services. Both Programs & Services and Public Facilities approved that resolution.

Ald. Blazar moved approval and the Committee voted in favor.

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

ACTION: **HELD 6-0**

NOTE: Ald. Sangiolo would like to start distilling the information the Committee has received over the past few months from residents, landscapers and other municipalities to begin drafting a leaf blower ordinance for review. She expects two or three more meetings on this before the Committee will be ready to vote a draft out to the Full Board of Aldermen. Her goal is to get a final vote on this by the end of the term which is December 31st. She explained that no public comment will be taken at this meeting. She is considering whether or not she will take further public comment after a final draft is crafted.

Committee members expressed that those on both sides of this issue are very far apart in terms of what they feel is a reasonable result. A compromise needs to be found and that has to be kept in mind by all involved including aldermen, residents and professional contractors.

Brookline/Arlington By-Laws

Brookline

Some Committee members felt that the Brookline model was not enforceable according to the representatives that came in to speak. It was also confusing. There is a new warrant proposing a total ban on leaf blowers there, but that has not yet been resolved.

Ald. Leary stated that she got some information from the Chair of Public Safety in Brookline. The Chair reported that the landscapers have been pushing hard on the issue saying the ban would force them to raise their costs, but the regulations have been in place since 2012 and there has been no cost increase.

The Brookline Police Dept. is putting in a mechanism to more efficiently and effectively handle resident leaf blower complaints by assigning an officer as a liaison to the Public Safety subcommittee.

Brookline does not regulate electric blowers and that is probably because they are used mainly by residents and not by professional landscapers. They are quieter and non-polluting and perhaps Newton should consider excluding them from the ordinance.

Arlington

The Arlington model has changed over time and went from a seasonal ban to now allowing use all year long but with slightly more restricted hours from June 15-September 15. Committee members did not feel that was a good model for Newton

They allow only one leaf blower per 6,000 square feet. They chose 6,000 square feet because that is the average lot size in the Town. Committee members felt a similar restriction might be useful.

Arlington also allows a higher dB level and if Newton imposes a seasonal ban then perhaps Newton might consider a higher dB level as well. Some Committee members did not think more powerful leaf blowers should be allowed and that the quietest equipment available should be the standard.

One of the communities (the Committee could not recall which town) spoke about “training” for the landscapers on proper use of the machines. Perhaps a required training session on the equipment, which could also provide an opportunity to certify that the machines meet the requirements set forth in the ordinance, and education on the terms of the ordinance, would be helpful.

Working Group/Demonstration

Joe Caruso, a Newton landscaping contractor who has been communicating with the Committee on this issue, sent a letter offering to put together a working group and to conduct a demonstration of leaf blowing and raking. Many Committee members felt this would be good to see the various machines to know how they sound and how efficient they are. The Committee felt it would be useful to hear any information they would like to offer and to see a demonstration. The Committee will continue its work on crafting a draft ordinance and receive input from that group when they have any information to share. This information may inform the Committee and persuade it to make changes to what has been proposed for the draft ordinance including the issues of electric models and number of blowers per property.

This report will be forwarded to Mr. Caruso so he understands the questions the Committee has that his working group might be able to answer. Ald. Sangiolo would also like him to propose a few dates for a demonstration of equipment. The Committee would also like some technical information about the equipment and what is considered cutting-edge in the industry. Perhaps Mr. Caruso could reach out to the person he knows from the Ecco Company to provide that information.

It would be helpful to hear from companies that do not use leaf blowers at all and get a demonstration of their work and find out their costs. Ald. Leary said she would make some calls on that.

Economic Development Commission

Steve Feller, Chairman of the Economic Development Commission (EDC) has worked with and interviewed some of the landscapers to get information and the Committee heard from him and Chris Steele a couple of months ago. The Committee had asked if he'd spoken with other small business owners in the City, those that work at home and could possibly be impacted by leaf blower noise, and he had not. Ald. Sangiolo was not sure if that effort was undertaken and if there was more to report. Mr. Feller will be contacted to determine if he has any more to report on behalf of the EDC. Ald. Rice will contact Mr. Feller.

Draft Ordinance Recommendations

Days/Hours of Operation

The current noise ordinance in Newton allows for landscaping work to be done on Sundays. This amendment was made several years ago in response to those who have religious restrictions that do not allow them to work on Saturdays. The current draft proposal is prohibiting use on Sundays and the Board has received a number of letters and emails from the Jewish community stating that this is unfair to their constituency and asking for parity of the weekend days. For the most part it is homeowners doing yard work on Sundays, not the professional contractors. A Committee member argued that construction work is prohibited on Sundays so it would make sense to organize the landscaping restriction in the same way. Sunday tends to be a quieter day in the neighborhoods and perhaps a waiver provision can be added. It was noted that most homeowners tend to use quieter machines and probably many are electric models. It was suggested that the draft ordinance be amended to allow personal use by a resident on Sundays with the time restriction.

Some Committee members noted that a number of people who opposed a ban, still made suggestions about shortening the hours of operation in the current ordinance. Many thought starting later in the morning (8am or later) and/or finishing earlier in the evening (5pm) would be something to seriously consider. The current ordinance allows landscaping work from 7:00am-8:00pm weekdays, and 9:30am-8:00pm on Saturdays and Sundays.

Some thought the time of construction work should be changed to match these hours, but that change is not under the purview of this docket item.

Conclusion:

The Committee agreed on the following days and times to allow leaf blower use: 8:00am-5:30pm Monday through Friday; and 9:30am-5:30pm on Saturdays; and as suggested earlier, allowing personal residential use on Sundays, 9:30am-5:30pm.

Seasons of Operation

It was noted that some emails and testimony mentioned the need for flexibility in setting the allowed seasons. Weather plays the largest factor in being able to accomplish the fall and spring work and if the winter is particularly long, as it was this past season, it pushes their ability to work until later in the season. This could vary by a few weeks.

Some Committee members felt the original Arlington ordinance, which banned leaf blower use from June 15 to September 15 was reasonable, easy to enforce, and allowed contractors to get their work done. It's also easier for everyone to remember one time frame than two. There was some discussion about moving these dates a week or two in each direction.

Others felt prohibiting use from March 15-May 15; and October 15 to December 15 is a better model. The idea is to allow for use when there are leaves to clean up and those dates allow for that while allowing for more quiet months than the June to September model.

Conclusion:

The Committee decided to propose June 1 – September 15 as the timeframe in which use of leaf blower would be prohibited completely.

Definition

The Committee needs to determine if they would like to include leaf blowers that are push models in the definition; and if they would like to remove electric models from the ordinance. Some members felt the electric blowers should be exempt since they are quieter, less polluting and used primarily by residents and not professional contractors. Others, however, feel all types should be prohibited.

Conclusion:

The Committee agreed to include the push models in the definition in ordinance and to keep the electric models in the ordinance as well, except for the previously discussed exemption for homeowner use on Sundays.

Limit Number of Leaf Blowers by Property Size

Ald. Sangiolo would like to get some more information on this. It's difficult to know what the impact on noise level would be as well as the length of time needed to run the machines if limited. Perhaps the landscapers would have some insight. Some Committee members felt it was impractical in terms of enforcement to set limits. Lots sizes vary widely in Newton, whereas Arlington's lot sizes are generally about 6,000 square feet and don't vary as much, which makes enforcement easier. Ald. Sangiolo will check with the representative from Arlington, Mr. Greeley.

Conclusion: *To be determined.*

Exemptions

The Committee has already mentioned an exemption for electric models for personal use on Sunday's by residents. Otherwise, the draft ordinance does not allow any exemptions. Some Committee members felt it would be sending the wrong message to allow the City to be exempt from this ordinance. On the other hand, the golf courses may be reasonable to exempt as they need them to keep the greens in good order, however, all alternatives need to be explored before allowing an exemption. The colleges and other non-residential large properties need to be considered as well. Any exemption should have clear restrictions as well.

Commissioner DeRubeis has told Ald. Sangiolo that his department will abide by whatever ordinance is put in place. She would like to know what equipment the Parks & Recreation Department uses and the Committee would like hear Commissioner DeRubeis' thoughts as well.

Conclusion: *To be determined.*

Enforcement

Several Committee members noted that enforcement has been difficult. Using a dB level that has to be measured has not been effective in Newton, as was mentioned by Officer Marzilli when he joined the Committee earlier in the year. The Police Department wants an ordinance that is clear-cut and simpler to enforce. Committee members felt that a seasonal ban would be easier to enforce as it is much more clear-cut. The label on the machine states the dB level so the officers

will not have to measure the noise with a meter. If the machine is older and does not have a label then it is not allowed for use.

A Committee member had heard a suggestion from a resident that perhaps there could be a complaint driven process. After a certain number of complaints are registered, an officer goes out instead of going out on each call. Another idea is to ticket the homeowner instead of the contractor because they are ultimately responsible for what is happening on their own property by people they are paying to provide a service. Some Committee members felt it was better to set up the conditions so that the violation opportunities are fewer and keep the police as enforcement to ticket the contractors because homeowners are not often home when contractors are there. For snow removal, however, if a contractor puts snow on a sidewalk from private property, the homeowner is held responsible, not the contractor. It is something to consider.

It was suggested that the homeowner be notified if their contractor is in violation and receives either a warning or a ticket as a dual enforcement method. There are homeowners who ask their contractor not to use leaf blowers at all, and some companies don't use leaf blowers as a policy choice. These are choices for the homeowner to make when they are paying for a service. The Law Department, Inspectional Services Department and Police Department would need to be consulted on this. Neither Arlington nor Brookline use that method. It might be something to explore.

Conclusion: *To be determined.*

Ald. Sangiolo asked that this information be forwarded to the Law Department to create a new draft with the recommended changes. The Committee will take these items up at the October 21st Programs & Services Committee meeting.

#31-15(2) 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 @ 12:14PM]

ACTION: **HELD 6-0**

NOTE: See note above.

Meeting adjourned.

Respectfully Submitted,

Amy Mah Sangiolo