

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, OCTOBER 3, 2007

Present: Ald. Johnson (Chairman), Hess-Mahan (Vice Chairman), Baker, Coletti, Merrill, Parker, Sangiolo; absent: Ald. Lipof

Also Present: Ald. Albright, Fischman

Others Present: Marie Lawlor (Assistant City Solicitor), Fran Towle (Commissioner, Parks and Recreation), David Turocy (Commissioner, DPW), Bob Derubeis (DPW), Karyn Dean (Committee Clerk).

#242-03 ALD. JOHNSON, SAMUELSON AND SANGIOLO requesting a discussion to determine times and places where dogs may be off leash on public grounds excluding schoolyards.

ACTION: **HELD 6-0 (Ald. Merrill not voting)**

NOTE:

Introduction

Chairman Johnson introduced the public comment portion of the meeting to discuss the dogs off leash ordinance. She said that this was an opportunity to get the public's view of the current ordinance so that the Committee could make an informed decision.

Outline of the Ordinance

Ald. Albright introduced members of the Task Force that were present: Richard Tucker, a resident member, Mitch Fischman, Aldermanic member, Fran Rice, Parks and Recreation, and Ann Dorfman, who was not a member of the commission but was at all the meetings. She also wanted to thank Marie Lawlor, Assistant City Solicitor, for all of her excellent work.

Ald. Albright summarized the ordinance which was the result of 2 years of work by the Task Force that was commissioned by the Board. They finished their work in late spring and brought a draft ordinance to the Parks and Recreation Department and the Conservation Commission, who in turn asked for two rounds of changes.

The ordinance accomplishes the following:

- The ability to have off leash dogs at certain places and certain times under certain rules that would be governed by the landowners. The major landowners were the Parks and Recreation Commission and the Conservation Commission.

- Establishment of an advisory committee whose home would be in the Planning Dept. and whose job would be to advise the land owners on rules and regulations for off leash dog areas and criteria for selecting those areas. The final decision would be made by the land owners.
- Establishment of a 2 year trial during which time they could identify the areas. Each area would require a group of people to sponsor and manage it in a way that would mitigate any negative effects. Their goal is to have a situation that is good for the parks, the people, and the dogs.
- Evaluation after the 2 year pilot program by the advisory committee that would provide a recommendation to the Board as to whether the ordinance should continue, be changed, or ended.

Public Comment

In Favor of Ordinance

Lee McIntyre, 607 Commonwealth Ave. He said he regularly used Cold Spring Park with his dogs. It was a place where the dogs and their owners are well behaved. It's a de facto off leash park and there were very few complaints. He encouraged the committee to look at the parks that have become de facto dog parks as there was already self-policing going on. He said they all remind each other about cleaning up, and leashing dogs on trails, etc. He wanted the committee to take into consideration the actual hours that people use the park. He didn't feel that parking was going to be a problem and he didn't think they needed to provide fencing or water. Just making it legal would please the dog owners.

Margaret Cantor, 116 Dickerman Rd. She said she lived near Cold Spring Park and the park was wonderful. There were groups that meet at 11 and 4 and they let their dogs go off leash and they seemed under control. She felt 2 hour periods, twice a day, were reasonable. Giving it 2 years to see how it worked seemed like a good idea, with no fencing or one particular place designated.

Ted Kuklinski, 24 Henshaw Terrace. He thanked the committee for their work on this issue. He said dog owners ended up often being the overseers of parks. They kept them clean and neat and he had witnessed this in Wellington Park near his home. He felt the ordinance could serve to help the people who wanted to be with dogs together, and protect those who don't want to be with dogs. He felt it was time to move forward with this.

Lisa Cohen, 138 Albemarle Rd. She said she was very much in favor of the ordinance and had a dog that was trained as a therapy dog. Having dogs that were well socialized was in everyone's best interest, and one way to do that was to allow them to run with other dogs. She agreed that the spaces needed to be carefully considered and spread around the city. She believed that no law could legislate good behavior and that the dog

owners she knew and saw at Albemarle Park were good caretakers of the park. She also felt that the areas needed to be fenced to protect the dogs and protect the neighborhood as well. Ald. Fischman asked if Ms. Cohen would be opposed to the ordinance if it did not include fences. She said that she would not bring her own dog to an area that was not fenced in.

Dick Tucker, 23 Woodman Rd. He has served on the Off Leash Dog Task Force and thanked the rest of the task force for their excellent work. He was generally in favor of passing an amendment to the leash law that would allow for a pilot program for off leash dog parks. He said they needed a commitment from the city to enforce the law as amended better than they currently enforce the law. He also said they need some money to support the bare essentials of the program, such as educational pamphlets outlining rules, hours and locations of parks; barrels to hold trash and dog waste; and signs. He agreed that some fencing would be appropriate. One of the dog officers in Newton was on the task force as well and they had an opportunity to listen to his challenges. It was clear that it was very difficult for him to do his job for all kinds of animals across the entire city. Adding dog parks would add stress and frustration to his job and he wanted to empower more Newton police officers to enforce the leash laws. He encouraged the city to raise the dog licensing fees and allocate those funds to maintain dog friendly play areas.

Kate Wissel, 300 Homer St. She was a veterinarian and dog owner and she said she would support any off leash ordinance they may pass. She had concerns about dog and human health and safety issues. Her concerns are outlined in a letter that is attached to this report.

Alla Mantsur, 20 Jaconnet St. She said that owners who brought their dogs to Cold Spring Park watched them carefully. The dogs didn't run in packs for more than a few seconds because owners stopped them quickly. She also said that people who did not have voice control over their dogs didn't take them off leash and so this was self-policed. She felt dogs needed to run free and it was immoral to not let them do so. Dog parks were good ways to socialize dogs with each other and with people.

Alan Nogi, 48 Kingston Rd. His home abuts old Cold Spring Park and he was concerned about having his son use the park due to dog waste on the park. He found there was no problem because the dog owners have been terrific about picking up after their dogs and keeping them under control. He strongly supported the off leash dog park ordinance. As a dog owner, he uses it regularly and would like to see it become legal. He felt it would be a good option for have some areas fenced in, but not all parks would need that.

Janet Sterman, 120 Church St. She said she picked up after her dog as well as other dogs. She was in support of the ordinance as she currently drove to other communities to let her dog run free.

Opposed to Ordinance

Matthew Chao, 48 Hollis St. Mr. Chao said he was totally blind and used a seeing-eye dog to get around. He said that while the idea of a park for dogs had precedent, he was opposed to it. He believed that one of the biggest problems for dog handlers was the issue of dogs off leash who tend to be a distraction for them and sometimes cause injury to them or their dogs. Keeping dogs under control 100% of the time could not be guaranteed, even in a fenced in area. When there were control issues, he said it affected other people's rights of traveling safely and freely through an area without distraction or attack. He pointed out a Massachusetts law that described penalties for the owners of animal who harmed service animals. He had personal knowledge of people whose dogs have been attacked. A copy of the law is attached to this report.

Ald. Johnson said she would like to see statistics on how other communities have dealt with the service animal issues. Mr. Chao was unable to provide these statistics due to his inability to do research at work, but provided a letter that is attached to this report, along with a copy of "A State Legislator's Handbook on Guide Dog Protection".

Maria Leporini, 79 Parker Ave. Ms. Leporini was opposed to changing the law. She was concerned about dogs going on people's property and said the animal control officers have not responded to calls when dogs were loose in the neighborhood. Ald. Johnson clarified that this ordinance was not changing the leash law, it was just providing times and places in designated parks for dogs to be off leash. Ms. Leporini felt that if the dog owners wanted to socialize, they could invite them to their houses to do that, and was very much opposed to having dogs off leash anywhere, at anytime.

Alternative Ideas

David Roll, 21 Mague Place He said there was a small park behind his house that has become a de facto dog run, not only for the neighborhood, but also for people who drove there to use it. He was worried about kids being precluded from the park during the times the dogs could be there. He wanted to advocate for designated areas in bigger parks and away from smaller parks.

Steve Adler Gold, 20 Clarendon St. He said that Cabot Woods was a neighborhood place where many people brought their dogs. He saw the value in having some sort of ordinance to have dogs off leash, on leash, and maybe no dog areas as well. This would enhance the safety of those who didn't wish to be in the presence of off leash dogs. He was worried that people would not want to propose their own neighborhood park if it was only one of a few that was approved, as it would become over used. He felt that a certain number of areas should be approved before any of them go online to avoid that problem.

Close of Public Meeting

Ald. Johnson closed the public portion of the meeting and the Committee adjourned to Room 222 to continue their discussions.

Committee DiscussionRequirements

Ald. Johnson said she'd like to get this to the floor of the Board as soon as possible and vote on it before the term ends. She wanted to know what it would take to get the ordinance ready for that.

- Ald. Parker said he needed a requirement that these areas be fenced. Ald. Sangiolo agreed with that requirement. Ald. Johnson asked if places like Cold Spring and Edmunds Park would need to be fenced. Ald. Parker said he didn't know where the parks should be, but wherever they were, they should be fenced.
- Ald. Baker said he would like to see the Commission stay for more than one year. If it's a 2 year pilot program it made sense to keep the same people.
- Ald. Baker would also like to see enough resources to fund enforcement and the education process. They needed to decide whether the enforcement should be extended beyond the animal control officers. Ald. Albright said she spoke to Sandy Pooler and he said he could find \$5,000 - \$10,000 for barrels, signs, etc. Instead of police giving tickets first, there would be educational pamphlets handed out as a first warning and all the police should be empowered to hand out the pamphlets. Ald. Sangiolo thought that any police officer could enforce the current ordinance, not just the animal control officer. Ald. Johnson had been told years ago by Chief Cardero that the Police Dept. will enforce any ordinance that the Board puts in place.
- Ald. Baker said he would also like to know what the financial impact will be on the Parks and Recreation Dept. Fran Towle said that dogs were off leash in parks now and if there were more dogs, it would have an impact. Ald. Johnson said the purpose of the pilot program was to determine what all the implications might be.
- Ald. Johnson said she would like the police Chief or his representative to be involved in the first meeting in November when the Committee will discuss this again. They would like to understand the problem of enforcement. She would also like Sandy Pooler at the meeting to discuss the issues of dog licenses and fees.

Waste Receptacles

Ald. Coletti was concerned that dog feces would be deposited in barrels with other trash. He said that people like to take bottles out of the trash and they could get contaminated. Ald. Sangiolo said there were recycling containers for bottles and cans, people would get in the habit of using them. Ald. Parker suggested there would be designated stations with bags for feces and a receptacle. Ald. Johnson said that would be the ideal, but since this was a 2 year trial, the City would probably not want to invest in something like that that may get removed.

The Committee moved to hold the item for further discussion.

#422-06 ALD. HESS-MAHAN requesting creation of an ordinance prohibiting the use of portable gasoline-powered leaf blowers within the City limits.

ACTION: **HELD 6-0 (Ald. Merrill not voting)**

NOTE:

Gas vs. Electric Blowers

Ald. Hess-Mahan said he has received many, many emails in regard to this issue. He was concerned that the landscapers might use gas generators to power electric leaf blowers and that was an unintended consequence that he didn't want to happen. He pointed out that many of the electric blowers were becoming just as noisy and powerful as the gas blowers even though the emissions weren't as high as the gas. Therefore, they would still cause problems with blowing up particulate matter into the atmosphere and into people's lungs. The industry has started making the gas blowers run cleaner and a bit quieter, but they're making all of them more powerful. This continues to cause the problem of particulate matter in the air for those with asthma, heart and lung disease, the elderly, children, runners, etc.

Yonkers, NY Experience

Ald. Hess-Mahan reported that the City of Yonkers, NY, just went through this same debate and they have some of the worst air in the country and one of the highest asthma rates in the country. It was no accident that these 2 things went together. They have done a trial seasonal ban (May 1 through September 30) on leaf blowers and they found that it worked. People didn't use them and didn't miss them. They found that landscaping rates did not go up and they had relative quiet all summer long. It was a very positive experience that was noticeable and was covered by the NY Times in several articles. They originally passed it by a vote of 5-2 and they feel that it would pass again because it was such a positive experience. Because of the many calls and emails he has received from people who were originally opposed to a full ban but were now amenable to a seasonal ban, he felt this would work.

New Proposal

Ald. Hess-Mahan said he would like to scrap the original item and go for a seasonal ban on all leaf blowers, with a timeframe to be determined, but summer time seeming to be the best. He pointed out that many people were at home during the day and were subjected to the noise, and people with asthma, in particular, were negatively affected. Ald. Johnson pointed out that the outdoor environment of a lawn or yard did not have to be perfect, so having a few leaves here and there was certainly tolerable. She had her 15 year old leaf blower tested by the Police Dept. decibel meter. At the source it was 84 decibels and 50 feet away it was 64 decibels. She felt that if a 15 year old machine could meet the ordinance, certainly newer equipment could.

Ald. Baker thought a seasonal ban was a good first step. But going forward he felt that getting to a full ban could be accomplished. Ald. Johnson said that a year round ban would not be acceptable to the entire population of the City because there were some

people who were simply unable to rake anymore. Ald. Hess-Mahan said some cities have not banned them entirely, but they could be used for certain reasons. There might be a permit process and there might be requirements for certain types of equipment.

Ald. Parker felt they needed to tighten up the noise ordinance, regardless of the source of the noise. He also felt they should include construction noise all weekend, instead of just banning it on Sunday. He agreed that some sort of seasonal, and/or hourly restrictions should be put in place for leaf blowers. He likened it to the light ordinance – light over a certain brightness can't be shining on your neighbors' property - and there shouldn't be noise over a certain level bothering your neighbor either. Ald. Parker questioned the problem of lawnmowers. He felt they were as polluting and noisy as leaf blowers. Ald. Hess-Mahan said that the EPA will hopefully be changing their standards in the near future, requiring catalytic converters on lawnmowers and that the problem of leaf blowers is the distinct problem of stirring up particulate matter.

City Services

Parks and Recreation

Fran Towle checked with the contractors they hired to remove leaves in the fall. The three contractors gave estimates that were double the usual cost should they be prohibited from using leaf blowers. As for grass cutting, they blow the clippings back onto the property from the sidewalk for a cleaner look. For that work, there was a 25% increase on the contract. They cited increased man power and time as the reason for the increases. Ms. Towle said the grass cutting work occurred from May through October, and the leaf work from the end of October to mid-November. Ms. Towle said the mowers they had could not accommodate bags to collect clippings. Ald. Johnson suggested that having some grass clippings on the sidewalk was not really a big problem and perhaps they did not need to clean the sidewalk with the blower. Ms. Towle said they also use the blowers to remove the smaller dustings of snow on sidewalks. She said it would require major overtime to remove that with brooms.

Department of Public Works

David Turocy said the impact on DPW was not as big. He said they have 10 leaf blowers that are mostly used for leaf collection. They do use them sometimes on parking lots to clean up debris that street sweepers can't reach. They could use brooms and make them work without significant impact.

Cambridge Model

Ald. Hess-Mahan said that Cambridge was looking at doing something very similar and they've looked at other contractors who were willing to do the work, without leaf blowers, for less money. They would continue doing their in house work without gas leaf blowers during the seasonal ban.

Opposition to the Ordinance

Ald. Coletti said that he represents two very different areas – Waban and Upper Falls. He said that a ban would cause people to complain when the properties didn't look as good. He felt that they were trying to restrict too many things in the City. He thought they should try to encourage people to be more considerate and educate them instead of banning leaf blowers. He was concerned that they would try to ban snow blowers next and he didn't want to legislate how other people live their lives.

Street Sweeping

Ald. Coletti wanted to get a cost analysis for sweeping the streets to keep the city looking clean. He said he would ask for the city to sweep the streets 9 times a year, as they used to. Ald. Hess-Mahan said the EPA required street sweepers to use water to keep the particulate matter out of the air because they discovered that PM was causing health problems. Ald. Coletti said the city needed to step up their efforts to keep the city clean if they were not going to let people do it for themselves.

David Turocy said that the city no longer vacuums up leaves from the sidewalks that residents sweep out there. Ald. Sangiolo said that Waltham does that and she'd like to find out what the costs would be to have it done. At the time of this report, David Turocy said that he knew it would require hiring more people, and he was working on getting a cost estimate together.

Health Concerns

Ald. Hess-Mahan said he brought this item forward because of the health concerns. He said this was not about restricting people's freedom, it was about protecting people's health and now that they know the risks, it was their obligation to do something about it. Ald. Coletti felt this was going over the line. Ald. Johnson said that leaf burning was banned due to health risks, and she didn't think there was any great negative effect from that upon the city. She said that these machines also posed a risk to the operators. City employees running these machines were required to wear ear and eye protection as stated by OSHA.

Ald. Hess-Mahan sensed that there was support for a seasonal ban and they needed to work out the details of that. The committee voted to hold the item for further discussion.

#329-05 ALD. JOHNSON & ALD. ALBRIGHT requesting that the **Noise Ordinance** be revised and updated to better reflect the noise problem being faced by the City.

ACTION: **HELD 6-0 (Ald. Merrill not voting)**

NOTE:

Police Noise Report

The Newton Police Department provided the committee with a report on noise complaints from January through September of 2007. There were 600 noise complaints

in general, 20 from landscaping, 27 from construction, 1 from air conditioning, and 1 from a fountain. No fines were imposed on any of the violations.

Major Changes Proposed in Ordinance

Disturbing the peace: there was nothing in the ordinance regarding loud parties and so forth. They added a section regarding unreasonable or excessive noise between 11pm and 7am.

Noise levels: Reduced decibel levels for yard, garden, grounds maintenance equipment to 65 decibels over a 4 year period. It would be a gradual reduction with the 4th year requiring 65 decibels. Today both gas and electric leaf blowers can be bought at 65 decibels. Vehicular sources were streamlined.

Construction Activity: This was added to the definition of construction and demolition. Ald. Coletti suggested that excavators be added to the list of construction equipment as they are extremely loud.

Permits for Exemptions: They added language to have the Mayor file permits for exemptions with the Clerk of the Board and to each of the ward aldermen for the affected area. Ald. Parker asked that be clarified as each of the 3 aldermen for the affected area (ward, and 2 aldermen-at-large).

Non-Criminal ticketing: Allows non-criminal ticketing for enforcement. Criminal disposition was already in the ordinance.

Ald. Johnson explained that there were not many changes, but they did come out of extensive research. This ordinance was not the most restrictive, by any means, as they looked at ordinances around the country, but found these were reasonable restrictions. She had an email from a member of an organization that supported landscaping and yard maintenance workers, and although he was against the ban, he was in favor of noise level restrictions. Ald. Johnson noted that manufacturers were currently making equipment that could meet these standards. The Committee had input from the police, inspectional services, and aldermen so she felt they did their due diligence.

Blue Laws

Ald. Parker also asked that Saturday and Sundays be treated in the same way, in terms of construction work. Ald. Hess-Mahan said that the Blue Laws restrict business that can be done on Sundays. The Blue Laws have, in fact, not been repealed. The way the current ordinance is written, complies with the Blue Laws. Ald. Parker suggested they have equal prohibitions for both days. Ald. Johnson was concerned that homeowners can not be prevented from doing work on their homes on Saturdays. Ald. Parker said there was some room for compromise. Ald. Johnson asked Marie Lawlor to look at the Blue Laws in regard to the weekend construction work. Ald. Baker was concerned about losing the one day of quiet that they currently have in the ordinance.

Athletic Games/Loudspeakers

Ald. Sangiolo said that athletic games and the noise from the loudspeakers at the games from Lasell College were a concern in her ward. She said the houses shake and police were called but the noise goes back up when the police leave. The police are supposed to ticket repeat offenders but Ald. Parker said the police don't even have the tickets in their books. Marie Lawlor was going to see if that fell under Disturbing the Peace.

The Committee voted to hold the item for further discussion at the first meeting in November.

Respectfully Submitted,

Marcia Johnson, Chairman