



Programs & Services Committee Report

City of Newton In City Council

Wednesday, October 28, 2020

Present: Councilors Krintzman (Chair), Noel, Albright, Humphrey, Baker, Greenberg, Wright, and Ryan

Also Present: Councilors Kalis, Grossman, Malakie, Leary, Norton, and Laredo

City Staff: Jonathan Yeo, Chief Operating Officer; Marc Welch, Deputy Commissioner of Parks, Recreation and Culture and Superintendent of Urban Forestry; Sue Dzikowski, Comptroller; Marie Lawlor, Assistant City Solicitor; Maureen Lemieux, Chief Financial Officer; Nicole Banks, Commissioner of Parks, Recreation and Culture; Carol Stapleton, Rec Program Manager; Deborah Youngblood, Commissioner of Health and Human Services; Linda Walsh, Deputy Commissioner of Health and Human Services; Nathan Giacalone, Committee Clerk

Referred to Programs & Services and Finance Committees

#421-20

Transfer \$400,000 to the Forestry Division of Parks, Recreation & Culture

HER HONOR THE MAYOR requesting authorization to transfer the sum of four hundred thousand dollars (\$400,000) from Acct #0110498-579400- Reserve for Snow & Ice Removal to the Forestry Division of the Parks, Recreation & Culture Department to cover the costs of the three wind events that have occurred thus far in this fiscal year.

Action:

Programs & Services Approved 8-0

Finance Approved 5-0 (Councilor Norton not voting)

Notes: The Programs & Services Committee was joined on this item by members of the Finance Committee as well as Jonathan Yeo, Maureen Lemieux, Nicole Banks, and Marc Welch.

Ms. Lemieux explained that there were three major wind events this year. The original plan at the beginning of the fiscal year was to avoid supplementing this budget with Snow & Ice funds. By the third wind event, Ms. Lemieux said that the Forestry Division was unable to perform without a budget supplement. These budget supplements often come from the Snow & Ice budget. The City budgeted \$4.5 million this year for snow and ice. About \$880,000 was received last year that was set aside in the inclement weather reserve, with another \$700,000 carried over from last year's snow and ice budget. Public Works carried over about \$100,000 extra from last year as well. In total, Ms. Lemieux said that the year began with about \$6 million set aside to address weather events before touching Free Cash. She said that the \$400,000 in this request will come from the Comptroller's Reserve, bringing the remaining Snow & Ice budget down to about \$5.7 million. She said that \$5.7 million is the average amount budgeted for Snow & Ice

every year. Though two winters in the last several years have used the entire Snow & Ice budget, requiring the City to use Free Cash, Ms. Lemieux said that the Snow & Ice budget will still be in good shape after this transfer.

Mr. Welch said that none of the three tree events in the current fiscal year were abnormal, but in the past 20 years there have not been more than two events per calendar year and this year there have been four. This required the hiring of additional contractor services to clean up after these storms as well as additional staff overtime. Mr. Welch said that because of the return of the in-house tree crew, this request is \$500,000 less than it otherwise would have been.

Commissioner Banks said that these same storms also impacted Eversource and plans are underway to have the Newton South High School field lights on as soon as possible.

Discussion:

Q: After the carryovers, what is left over in Snow & Ice?

A: There is about \$5.7 million remaining dedicated for Snow & Ice. Free cash is held until going through the winter months. There is less Free Cash than normal due to COVID, but there is still about \$7.3 million remaining in certified Free Cash.

Q: Can you explain how the Snow & Ice budget has been built up in recent years? There has been a great positive trajectory for this.

A: About 10 years ago, Newton was budgeting about \$1 million a year for snow and ice. Now about \$5.7 million is spent every winter. About \$4 million in Free Cash had to be held in this period, anticipating it would be used for Snow & Ice. Beginning in 2011 for the FY2012 budget, the Snow & Ice appropriation has increased every year. Though COVID costs prevented this appropriation from increasing this year, the funding was held level.

Councilor Albright moved Approval for Programs & Services which carried 8-0.

Councilor Kalis moved Approval for Finance which carried 5-0 (Councilor Norton not voting).

Referred to Programs & Services and Finance Committees

#49-20(2) **Requesting establishment of a fee for the registration of leaf blower contractors**
Programs and Services Committee requesting an appropriate fee be set for registration of leaf blower contractors pursuant to possible revisions in the Noise provisions of Newton Ordinances, Chapter 20, relating to leaf blowers, to provide for registration of leaf blower contractors and their certification of understanding and intention to comply with the provisions of the Noise ordinance, contained in possible revisions to Chapter 20, prepared by the Newton Law Department to improve compliance with existing standards for leaf blower operation.

Action: **Programs & Services Held 8-0**
Finance Held 5-0 (Councilor Kalis not voting)

Notes: The Committee was joined on this item by Jonathan Yeo, Chief Mintz, Marie Lawlor, and members of the Finance Committee.

Councilor Baker summarized the proposed revisions that he and Marie Lawlor have been working on. He said that the goal is to increase leaf blower ordinance compliance because currently, those who flout the ordinance have an unfair advantage. He and Ms. Lawlor studied similar ordinances in other communities, focusing on Brookline because of its fee and registration process. The registration will certify that all contractors are aware of the rules as well as their employees. Illegal operation can lead to loss of registration. The registration stickers will be visible for trucks and equipment and are clearly labeled so that they cannot be switched between different operators. Those who follow the ordinance will be listed as such for positive reinforcement. The revisions also clarify the operator as the landscaping company rather than just the individual using the machine. The proposed revisions make the property owner responsible as well. The police are left in charge of compliance because ISD does not have the field staff to respond quickly, but the hope is that this process will promote compliance ahead of time and relieve some pressure from the police. Cambridge was also used as a reference for its leaf blower language and technical edits.

Ms. Lawlor said that in addition to the proposed changes described by Councilor Baker, another change is to move the definition of the leaf blower from noise ordinance to this section for simplicity. The fee amount currently listed in the red-lined materials is a placeholder and subject to change based on the Committee's decision. Finance should also look at the proposed fine for improper operation without a permit.

The Chair clarified that the joint component is the fee, which Finance will vote on after Programs & Services votes on an amount.

Mr. Yeo spoke on behalf of the administration, saying that it believes more discussion is needed due to this being a controversial ordinance. There should be more talk with stakeholders and a public hearing as well. The fee (distinct from the fine) should be nominal. He raised other concerns on enforcement, such as is the liability is shared between the homeowner and contractor, how is the fine distributed between them?

Chief Mintz spoke as well to provide input from the Police Department. He said that many officers feel the court may have a problem fining the homeowner because there needs to be guidance on how the homeowner is knowledgeable about a violation. If they are away at work, this creates a liability issue. There are other concerns that this could generate negative interactions with the public. Citizens may not be required to identify themselves as well which puts the officer in a difficult position. Chief Mintz said the police regularly respond to leaf blower calls and offered to share the statistics upon request.

The Chief elaborated that because of COVID, issues seen as "less serious" are being treated with reduced contact, which includes leaf blower complaints. He said that while not an excuse, many officers see it as a challenge to respond to a leaf blower call after, for example, handling a domestic violence incident.

Discussion:

Joint Committee Member Comments:

C: The homeowner should not be fined for a violation. How is landscaper authorized by the city and the homeowner? The police should not be involved more than they need to be. The ordinance says an operator must be caught three times before getting fined, is it realistic that somebody would be caught three times?

A: By registering with the City, a leaf blower operator certifies their understanding of the ordinance, and homeowners authorize the operator by hiring them. There is a distinction between the permitting process and fines for violations. A homeowner is entitled to a warning before being fined, unlike a commercial operator who is fined for the first offense.

C: In Committee there has been much discussion over the fines, but the consensus appeared to be that the homeowner should have at least some stake in this ordinance. The question of enforcement also needs to be resolved.

C: Enforcement of this ordinance needs to be removed from the police.

Q: The idea of putting registered landscapers on a list is a good one because the homeowner would be knowledgeable. Improperly lettered landscaping trucks are a big problem in Newton, will the revised ordinance address this?

A: In paragraph B of the new draft, the ordinance states that the operator must ensure that all identification and permits must be visible. This is not required in the current ordinance.

Q: I have heard that there was a lawsuit against the City regarding the leaf blower ordinance, what are the details of this?

A: When this ordinance was first discussed, a landscaper group tried getting it declared unconstitutional in court but the suit was thrown out.

Q: What are the basic steps of compliance and noncompliance in the proposed revisions to the ordinance? How were the different fee and fine amounts arrived at? What is the perspective on the timing of potentially asking the police to do more when the police reform task force is reexamining their role?

A: The administration would send letters to landscapers informing them of the need to register, and this registration would clarify their understanding of the ordinance. The proposed fine is the normal amount for civil ticketing. There could potentially be other sanctions against operators who violate the ordinance as well, such as loss of registration and the ability to use a leaf blower within Newton. The goal of these revisions is to proactively enhance compliance to minimize the burden on the police. Other questions on enforcement should wait for the task force to complete its work.

C: Significant changes like this should have a public hearing and greater press coverage. The ordinance will be more effective if the homeowner has a stake too, otherwise the costs may just be passed along to them.

Q: Would the permit be one-time or annual? About how many landscapers currently operate within the City? How would a violation be determined?

A: This would be an annual permit. There are over 100 landscapers operating in Newton, but as they change their names it can be hard to keep an exact number of this. Nonpermitted leaf blowing or use of unlawful leaf blowers would have to be observed to issue a citation, although it allows discretion to issue a warning when appropriate. The maximum fine that would be issued is \$300.

Q: Could there be enforcement problems if the officer knows the landscaper or the homeowner?

A: If there is a personal conflict the officer can call the sergeant and request to be taken off the call. This issue can apply to a variety of situations but is uncommon and this procedure is in place to handle it when it does arise.

Q: Will there be weekend enforcement if the police are not involved?

A: No, since ISD only works during business hours there would be no enforcement after hours, on weekends, and on holidays.

Q: If somebody is registered and certified with a proper leaf blower, what happens if they use the wrong one?

A: This would be a violation of the ordinance because by registering, the operator agrees to comply, and they could eventually lose their ability to use leaf blowers for landscaping in Newton. They would also be subject to the graduated fine level. If police do not enforce this then it seems unlikely ISD would be able to replace them.

Q: Could tickets just be left at the door if it is difficult to reach the homeowner?

A: This could be done but it is not always best practice to do so.

C: Our ordinances reflect our community values, and by having this ordinance the homeowner should be liable too. Based on the budget process in the Spring enforcement should not be granted to the police on this. If ISD is unable to properly enforce the ordinance, then the City should find a position that can.

Q: The homeowner should be liable, and enforcement is especially important as more people are home during the day now than normal. IF this enforcement seems frivolous to the police then they should not enforce it. Can the ability to do other landscaping be removed from those who violate the ordinance?

A: There is simply no other entity in the foreseeable future who would be able to replace the police on rapid response for this ordinance. Due to the current budget situation this is not expected to change soon. No penalty can impact somebody's ability to do business outside the specific scope of the ordinance. However, these violations would be a public record and the operator would be removed from the list of registered landscapers.

C: The homeowner should not be fined. This is a controversial issue to begin with and we want homeowners to be cooperative on this. Fining them could create a combative environment.

C: The police should not be enforcing this ordinance. It could be possible for ISD and parking enforcement to pick up some of the weekend work, though this might mean some days there would be no enforcement. Homeowners should be liable as well because it would put more

pressure on the companies to comply.

C: While these revisions will not be complete for the Fall, hopefully they will by springtime. However, I will not support this revision unless the role of the police is significantly modified. Perhaps more issues could be moved to unarmed code enforcers which would allow a shift in manpower. The snow shoveling ordinance could be used as a model for homeowner liability.

C: Based on a similar subject discussion in Arlington regarding their snow shoveling ordinance, there should be a conversation at some point about community policing and what it means for leaf blowers in Newton. This could help determine if having the police involved in this ordinance is the best choice or not.

Other Councilor Comments:

C: There have been many good ideas discussed such as registration. I am not in favor of fining the homeowners, instead the City should focus on educating people about the leaf blower ordinance. This could be the role of the police if they continue to be involved with this ordinance. There should also be a public hearing for the proposed changes. In order for this ordinance to succeed there has to be a commitment from the administration and Police Department, and frankly this does not appear to be a priority for them. The police should remain as enforcers because there is simply nobody else to pick up the role in the near future. They should be able to enforce this quality of life issue in a non-confrontational way.

C: It is important to think carefully on the role of the police for this ordinance and be careful of what we ask them to do. If there are calls to defund the police, how can the Council justify sending out armed police officers to address leaf blowers? With the growing disconnect between law enforcement and the general public we need to be careful not to make this worse. They should not be asked to enforce this ordinance while being given less resources at the same time.

Q: How come detail officers sometimes ignore leaf blower offenses?

A: Many detail officers are retirees or from other jurisdictions and are instructed to only respond to emergency situations.

Mr. Yeo suggested that more discussions should be held, especially with ISD to determine the proper amount for fees and the best way to move forward.

Councilor Ryan moved Hold for Programs & Services which carried 8-0.

Councilor Humphrey moved Hold for Finance which carried 5-0 (Councilor Kalis not voting).

#49-20 Request for update on leaf blower ordinance compliance
COUNCILORS BAKER, LEARY, RYAN, AND HUMPHREY requesting update from the Executive Department on compliance with Newton's leaf blower ordinance and discussion of possible revisions to the ordinance's enforcement provisions to improve compliance.

Action: **Programs and Services Held 8-0**

Notes: Councilor Ryan moved Hold which carried 8-0.

#397-20 Request for updates related to public health in the Newton Public Schools

The President of the Council, on behalf of the City Council, requesting an update on Public Health issues related to school operations and reopening at every school level to the Programs and Services Committee at the second meeting of October and November.

Action: Programs & Services Held 8-0

Notes: The Committee was joined for this item by Deborah Youngblood and Linda Walsh.

Commissioner Youngblood updated the Committee on the progress of school reopening. After being open for 5-6 weeks, mitigation strategies have shown to be effective as there has been no sign of in-school transmission. In-person school is a priority for the Health Department (HHS), and the outlook is hopeful that school reopening can continue. If COVID conditions change, in-person learning will adapt accordingly.

Discussion:

Q: Who provides medical advice to HHS and how are these individuals selected?

A: There is decades of in-house experience between the senior Health Department personnel. The state provides higher-level and more specialized experience outside of Newton's resources. There is close collaboration with Newton-Wellesley Hospital as well. HHS has also hired a medical adviser with extensive experience.

C: Other communities have gathered advisory groups of specialists. Newton has many leading experts living in the city and the Health Department should reach out to these residents who are eager to help.

C: Is there an update on surveillance testing (testing with a quick response time)?

A: Surveillance testing is an important tool to mitigate the spread of the virus, though based on the conditions in Newton this is not recommended as a requirement for reopening. If it becomes more feasible then it should be considered. This tool would require more state assistance.

C: Can a quick testing site be established for Newton employees? Some of these other testing sites can take a few hours waiting in line and several more days to process the result.

A: Stop the Spread tents are run by the state and placed according to greatest need. Newton can lobby for a tent, but it does not make a final decision on this. The turnaround time on testing is also influenced by the backlog at the testing lab. There is a formal MOA developed with Newton-Wellesley Hospital to get employees a quick test.

Q: What role did HHS have in the decision-making process to reopen the schools?

A: Its role with the School Department is collaborative as school nurses work for the Health Department. HHS provides risk mitigation pillars and give guidance to schools through the nurses. The final decision to reopen or not is up to the School Committee.

Q: Will HHS be the deciding factor in the preventative measures being taken such as masking?

A: HHS has already designed these parameters and provides them to the schools. For example, the general medical consensus is that six feet apart is the recommended social distance as a tool to mitigate the spread of COVID. This summer, the Massachusetts Department of Elementary and Secondary Education (DESE) said that while six feet is ideal, three feet is sufficient. Since HHS's goal is not just to reopen the schools but to keep them open, it will continue to look for other measures to mitigate close contact. The department is unaware of any district using the three-foot standard.

Q: How would any reopening guidelines made by HHS change?

A: HHS is constantly reviewing its efforts and analyzing a wide range of data. There is no need to change any currently, but if conditions change in a few months, HHS will review this position.

Councilor Albright moved Hold which carried 8-0.

#390-20 Request for discussion on athletic field rental fees

COUNCILORS LEARY, ALBRIGHT, BOWMAN, DANBERG, KALIS, KELLEY, KRINTZMAN, LAREDO, MARKIEWICZ, NOEL, WRIGHT, AND RYAN requesting a discussion with Parks and Recreation and the Mayor's Office regarding fees charged for the rental of Newton's public athletic fields. This review should include an overview of the current fee structure, revenue generated, use of funds collected, non-resident rentals and benchmarks to surrounding communities.

Action: **Programs & Services Held 6-0 (Councilors Baker and Greenberg not voting)**

Notes: The Committee was joined for this item by Commissioner Banks. She introduced the item and said that the Fields Subcommittee of the Parks and Recreation Committee has been reformed and will study some of the issues of field use and fees that have been identified. It will assess the needs of stakeholder groups and determine how best to serve them. Commissioner Banks noted that fields are not normally rented during the winter but there may be winter rental this year due to COVID. Whenever fees are changed, there is plenty of advance notice. Commissioner Banks said that the fees are not structured to generate revenue, but they prioritize school athletics and Newton youth programs. The Parks, Recreation and Culture Department (PRC) has been made aware of complaints over there not being enough athletic fields as well as other scheduling conflicts. PRC has a field scheduler who tries to avoid user conflicts. Artificial turf and grass fees can likely be increased because they do not meet the market rate, deeper discussion will cover more details and additional features such as residency requirements and whether some groups should have non-waveable fee portions. This would generate revenue to better maintain the fields. The Fields Subcommittee will cover all of these topics as it completes its work.

Discussion:

Q: There have been many constituent complaints regarding field maintenance, what percent of maintenance do fees cover? Will fees be increased considering Newton's are cheaper than surrounding communities?

A: The revolving fund is only a supplement and is not a significant source of funding. The maintenance division and the appropriated budgets are the primary source of funds for maintenance. This account covers supplemental maintenance and one-time improvements. The exact maintenance budget can be provided to the committee at a later date.

Q: What is the policy regarding organized teams who use fields without proper permission?

A: PRC is aware of these situations which are arising more now, likely due to COVID. Often these are businesses who use the fields without proper permits. This is a problem because it deprives the City of revenue and PRC has no information for liability insurance and COVID protocols from these groups. The next step is the enforcement process which involves a fine if it's a recurring issue.

C: Field quality has gone down in recent years due to climate change and mismanagement and there is much catching up work that needs to be done.

Q: How much will it cost to bring some of these playing fields up to an excellent standard?

A: This Fields Subcommittee is looking at this. Full renovation of a full-size soccer field costs about \$350,000. This is not needed at every field and some may need far less money. There are three artificial turf fields with carpet replacement at \$700,000 each in the CIP.

Q: How do you determine the residency of groups?

A: Groups must submit a team roster to PRC as this will determine their residency status for field rental.

C: Part of the contracts with these groups should state how much of their fees go into upkeep. People often go to the fields with pickup games, but in one case a tennis coach just said that they had permission and provided no proof.

A: The City wants these fields to be available both to permitted organizations and residents for use when they want. PRC is working to design easily identifiable documentation to show they are permitted by the City. The Department is also working with Friends of Newton Tennis to see how they can interact with the community to address this issue. Some of these unpermitted users are businesses that are not allowed to operate indoors at the moment due to COVID.

Q: Is there a lot of vandalism and how much does it cost on each field to fix?

A: So far there has been one incident of vandalism at a grass and a turf field. The cost depends on the extent of damage. These incidents were the burning of small sections which were soon fixed. Vandalism incidents are recorded and reported to the police.

C: With enforcement challenges at fields, the solution is not to pass more unenforceable ordinances. Could unarmed code enforcers be useful?

The Chair said that many serious concerns of the fields have been brought up that will be

addressed going forward.

C: Other cities and towns talk about park rangers with ticketing authority. PRC does not have ticketing powers presently.

A: It may not be the same thing, but PRC needs to work through how notification happens before serving a fine. There is no park ranger system in Newton currently and police may need to be involved at some point.

Councilor Albright moved Hold which carried 6-0 (Councilors Baker and Greenberg not voting).

The meeting adjourned at 10:24pm.

Respectfully Submitted,

Josh Krintzman, Chair