Report of the Human Services Subcommittee of the Brookline Advisory Committee

Hearing on Warrant Articles 22 and 23 on October 3, 2019 5:30 p.m. at Brookline Town Hall room 103.


Brief: The Human Services Subcommittee held a hearing to continue its consideration of Warrant Article 22 and reconsider its vote on Warrant Article 23. The petitioner, members of the public, and Town staff all testified. The subcommittee voted no action on WA22 and favorable action on WA23 as amended.

WARRANT ARTICLE 23

SUMMARY

This article is meant to restrict leaf blowers from blowing leaves or debris onto public ways, or private property without expressed consent. The article as presented, however, undermines its own intent. By striking mention of sidewalks in the bylaw, it leaves our laws silent on the issue, and therefore no constraints exist. The added language labeled “e. essentially prohibits the use of a blower on the sidewalk unless a property owner or manager approves it (an exercise in self-granting authority). This is clearly not the intent of the petitioner.

BACKGROUND

It is not uncommon in Brookline for leaf blowers to be used on a public way (e.g. blow leaves off of a sidewalk). Commercial landscapers will also blow leaves forward to the street where they collect them with a vacuum truck, as one cannot drive a vacuum truck up onto a lawn.

The petitioner expressed frustration with several aspects of this, particularly noting dust clouds in the public domain as a result of blowing, and concern over people and companies depositing leaves or debris on private or public property (without consent).

Current bylaws do not sharply define what is and is not permitted.

8.26.1 in our Storm Management section states:

2. Definitions....
m. POLLUTANT: Any element or property of sewage, residential, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or non-point source, that is or may be introduced into any storm drain system, waters of the United States, and/or Commonwealth. Pollutants shall include without limitation:....4) refuse, garbage, litter, rubbish, yard wastes, or other discarded or abandoned objects, ordnances, accumulations and floatables;

And,

SECTION 7.5.11 OBSTRUCTIONS states:

No person shall place or cause to be placed in any street or upon any sidewalk of the town, any lumber, coal, iron, trunk, bale, box, crate, cask, package, article, or anything whatsoever so as to obstruct a free passage for travelers, nor allow any of the same to remain more than one hour after being notified by a police officer to remove it, except that nothing herein contained shall be construed to prevent the use of streets and sidewalks for building purposes upon obtaining a permit from the Board of Selectmen.

While these may allow for interpretive prohibitions, they do not address directly the issue of yard debris on the public way, and certainly not the use of blowers thereon.

DISCUSSION
The petitioner wants to restrict blowers from being used on public ways. He cites public nuisance and health issues.

They can blow up particulate debris that is unhealthy. This issue was previously considered by the Moderator’s Committee on Leaf Blowers. MassDEP monitors dust particulates at levels of 2.4 microns or less as this has been associated with disease. Most dust plumes generated by leaf blowers are on the order of 10 microns, which fall back down reasonably quickly. The Moderator’s Committee cited a study by Fitz, et al at the University of California that found dust plumes dissipated to background levels in 5 to 10 minutes and did not travel more than 20 to 30 feet from the source. This recognition, though, should not be seen as an excuse for inconsiderate use of blowers that result in dust clouds that readily affect those in the immediate area.

The petitioner also objects to debris being deposited in the public way, and on other people’s property.

The Subcommittee shares these concerns. The Subcommittee also recognizes, though, there are times when blowing leaves to the public way may, in practical terms, be unavoidable.
Landscapers moving leaves to the street to use vacuum trucks is effective and need not be obstructive and damaging to the air quality. Likewise, it may make sense for people to blow their leaves out to where they can be easily collected and placed in containers or bags for removal.

Brookline has a tremendous tree canopy, much of it being public trees. We expect property owners to keep their walkways clear of snow. Leaves, especially wet, can be equally hazardous on walkways. Blowing those leaves off can provide a public good.

The frivolous use of leaf blowers is certain to continue at times. Regulating poor behavior is always a challenge. The Subcommittee does not believe the proposed warrant article, as written or envisioned, will accomplish eliminating that sort of behavior. It could, however, affect the common good by reducing the level of sidewalk clearance and prohibit an effective and important means of removing leaves (vacuum trucks). There are times where the use of a blower on a public way may be beneficial.

We fully concur that there is no excuse for dumping one’s debris, whether with a blower or other means, on someone else’s property.

Given that there is no direct reference to depositing yard debris in the current Leaf Blower section of the Town’s bylaws, we recommend a specific reference be added. During our public hearings, Director Gallentine allowed how this specific reference would help them with guidance in enforcement efforts. Additionally, it was felt that it made understanding our bylaw a bit easier as it did not require cross referencing or interpreting the applicability of prohibitions or allowances.

**RECOMMENDATION**

The subcommittee recommends keeping the current language of the existing bylaw and adding a new provision.

The subcommittee unanimously recommends FAVORABLE ACTION on the following amended (bold) language:

**SECTION 8.31.3: LIMITATIONS ON USE**

a. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers on property under their control, or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower, except between March 15th and May 15th and between October 1st and December 31st in each year, and except for leaf blowers powered by electricity which are exempt from this seasonal usage limitation. The provisions of this Section 3.
a. shall not apply to nonresidential property owners but only with respect to parcels of land that contain at least five acres of open space.

b. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers on property under their control, or on the sidewalks or ways contiguous to such property, nor shall any person operate a leaf blower, except between the hours of 8 (eight) A.M. to 8(eight) P.M. Monday through Friday, and from 9 (nine) A.M. to 6 (six) P.M. on Saturdays, Sundays and legal holidays.

c. On land parcels equal to or less than 7,500 (seven thousand five hundred) square feet in size, no Property Owner or Property Manager or User shall operate or authorize the operation of more than 2 (two) leaf blowers on such property simultaneously. This limitation shall also apply to sidewalks and roadways contiguous to such parcel.

d. No Property Owner or Manager shall authorize the operation of any leaf blower and no person shall operate a leaf blower which does not bear an affixed manufacturer’s label or a label from the Town indicating the model number of the leaf blower and designating a noise level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology on their property. Any leaf blower bearing such a manufacturer’s label or Town label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any leaf blower(s) that have been modified or damaged, as determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the Town as provided for in this section, even if the unit has an affixed manufacturer’s ANSI or Town label. The Controller of any leaf blower without a manufacturer’s ANSI label on such equipment may obtain a label from the Town by bringing the equipment to the town’s municipal vehicle service center or such other facility designated by the Town for testing. Such testing will be provided by the Town’s designated person for no more than a nominal fee (which shall be nonrefundable) and by appointment only at the Town’s discretion. If the equipment passes, a Town label will be affixed to the equipment indicating Decibel Level. In the event that the label has been destroyed, the Town may replace it after verifying the specifications listed in the Controller’s manual that it meets the requirements of this By-law.

e. No Property Owner or Property Manager shall authorize or permit the operation of leaf blowers in a manner that intentionally blows leaves or other debris onto private property not under their control, without the express consent of the owner or manager of such property. Or, onto a public way except for immediate removal.
**POST SCRIPT**

Since the subcommittee’s consideration and vote, Town Counsel has recommended the following phrasing:

“No user shall blow leaves or other yard waste or debris onto private property nor shall any property owner or property manager authorize or permit leaves or other yard waste or debris to be blown onto private property, without the express consent of the owner or manager of such private property. No user shall blow leaves or other yard waste or debris onto any public street, sidewalk or other public property nor shall any property owner or property manager authorize or permit leaves or other yard waste or debris to be blown onto any public street, sidewalk or other public property, unless due care is taken for the safety of pedestrians and motorists and such material is promptly removed.”