Report of the Human Services Subcommittee of the Brookline Advisory Committee

Hearing September 26, 2019 7:00 p.m. at Brookline Town Hall room 103.


Brief: The subcommittee held a hearing where petitioner Don Warner presented and discussed his article. In addition, members of the public commented on leaf blowers, and the landscaping community expressed its concerns regarding the potential effects on their businesses. Erin Gallentine represented the Town and addressed questions by all in attendance. The subcommittee voted to table a vote and continue discussion on WA22 when Commissioner Papastergion could be in attendance, and voted “no action” on WA23. A report of the hearing is attached.

WARRANT ARTICLE 22

SUMMARY
This article proposes amending our current bylaw to ban completely the use of gas-powered leaf blowers, removing the seasonal allowance, with the exception of leaf blowers operated by Town employees or contractors while performing work for the Town.

BACKGROUND
Brookline has a long and unsettled history in dealing with leaf blowers. After several years of effort (including a Moderator’s Study Committee on Leaf Blowers), emotion and debate, Town Meeting codified constraints around leaf blower use in the Town’s bylaws (Article 8.31 Leaf Blowers). Specifically, leaf blowers may not operate at a noise level greater than 67 decibels (db). And, in the current bylaw, gas powered leaf blowers can only be operated from October 1st to December 31st and from March 15th to May 15th – periods of heavy leaf fall and cleanup needs. Also, leaf blowers may only be operated between 8 a.m. and 8 p.m. during the week and 9 a.m. and 6 p.m. on weekends and holidays.
DISCUSSION

The petitioner brought this article forward to address three concerns: health (leaf blowers throw up dust/particulates and emit exhaust), climate change (leaf blowers are carbon emitters), and noise. The petitioner conceded that it was the third item, noise, that is the primary concern. The petitioner, and others, related stories of overly loud leaf blowers and gas powered leaf blowers being used out of season. Accounts were also given of approaching violators only to be mocked or ridiculed. Furthering the frustration was the Town’s seeming lack, inability or disinterest in enforcing the existing bylaw in a timely or meaningful way.

The subcommittee heard and understood the first two concerns but had differing interpretations on the impact of the leaf blowers. There was a general understanding that dust clouds are potentially unhealthy and dangerous to some. However, a ban on gas powered leaf blowers will likely not have a meaningful effect as other types create the same dust if used uncourteously or irresponsibly. As to carbon footprint, while this may be a symbolic gesture, it is not significantly impactful as the MassDEP data estimates that leaf these blowers (statewide) would account for 0.1% of volatile organic compounds (VOC) emissions.

Noise was by far the greatest concern, as gas powered leaf blowers are generally louder and of a sound quality that projects farther. And while there are other (permitted) tools that are louder, leaf blowers are more pervasive – especially seasonally.

We also heard from members of the landscaping industry in town, and members of Town staff – principally DPW Commissioner Andrew Papastergion and Parks & Open Space Director Erin Gallentine. They described the tools they use and their practical and seasonal limitations.

Unlike towns in California that have very light leaf loads and a dry climate, Brookline has a very significant tree canopy. In addition to private trees, there are many Town trees that deposit tons of leaves onto streets, sidewalks, yards, and parks each year. Additionally, the heavy leaf seasons of fall and spring are often accompanied by wet weather. Leaves need to be removed, not simply for convenience or aesthetics but for safety and storm management reasons.

The petitioner originally posited that electric leaf blowers were sufficient for removal of even heavy loads of leaves and debris, and with manageable levels of convenience and cost. Members of the landscaping industry and Town staff testified that while there are times and locations during the year when electric blowers would suffice, and are in fact used, there are other times when only the more powerful gas powered blowers will work. Without these tools, the jobs simply cannot be done. They also expressed that it was naive to think it was possible to simply hire a crew sufficiently large enough to do all that work by hand – especially in any affordable way. The Town maintained it could not do without the more powerful units at
certain times, and the landscapers maintained they simply could not have a business without them during peak seasons.

Specific battery powered electric models were discussed. Generally they are a bit more expensive when including batteries, considered harder to work with, have short lived batteries, and are considered ineffective in many situations. The petitioner accompanied Town staff to hear and see various units. The landscapers allowed that they do use electric blowers in their tools mix and look forward to better options in the future, and the petitioner conceded that it may be a bit premature to rely completely on electric blowers.

While there were differing levels of agreement and appreciation on this issue, both sides listened to and heard each other.

The focus of discussions then became less about the current bylaw and specific models of blowers, to one of enforcing our current requirements.

**ENFORCEMENT**

Everyone agreed that enforcement is lacking. When Town Meeting established our current legislation, it did not budget additional positions to aid in enforcement. Enforcement primarily falls on the DPW (between 7 and 4 on weekdays) – specifically, one person who already has other duties. The Brookline Police Department is responsible for responding at all other times, though they cannot simply leave a scene immediately. Enforcement is complaint driven, resulting in minimal and late responses. By the time someone arrives, the offender has long stopped. Both the DPW and Police maintain call and response logs, though it was unclear to the subcommittee whether there is sufficient or well-structured sharing of the data. It was contended that the number of complaint calls has decreased, but it is not clear that the data is robust enough to support that claim, or if this is an artifact of the public simply saying “why bother” because the response is ineffective.

This created great concern.

The subcommittee spent much time discussing this with Commissioner Papastergion and Director Gallentine. The petitioner also met independently with the Commissioner and Director to discuss his concerns and ideas for better enforcement.

What transpired was a testament to cooperation, collaboration and communication. The Town took these concerns very seriously and responded to the ideas of the petitioner.

The Commissioner has proposed a new framework for enforcement (a portion of his memorandum appears below).
“Current Enforcement

Due to the limited resources provided by the current Bylaw, enforcement has been “complaint driven” and provided by one Code Enforcement Inspector within the DPW who also provides enforcement for sanitation violations. Generally, when complaints are received during business hours, they are documented and investigated and then either resolved or enforced. In many instances by the time the inspector arrives on scene, the alleged violator has already moved on and the complaint cannot be substantiated. The Inspector will then attempt to reach out to both the contractor and property owner to provide educational materials and discuss the penalties for further violations. Complaints received after business hours are handled by the Police Department who also report that in most cases the violator has left the site prior to their arrival. These complaints are then reported to the DPW the next business day for documentation and further follow up by the Inspector for resolution.

The Inspector has also reported that on many occasions the complaints were due to other types of landscape equipment such as mowers, chain saws and weed trimmers that are not controlled by either the Leaf Blower Bylaw or the Noise Bylaw. Although our statistics indicate that overall, complaints have decreased since the latest revisions to the Bylaw were made in 2016, the DPW recognizes that increased efforts are needed in both education and enforcement to further reduce violations with or without a complete ban.

Proposed Changes in Education and Enforcement

The DPW strongly believes that successful enforcement of the current Bylaw can be achieved by utilizing both an increase in dedicated resources and a change in methodology. Instead of using a complaint-driven approach we would propose to use a more pro-active seasonal approach for both education and enforcement as follows:

* Provide seasonal press releases in local media outlets as a public service announcement
* Update the current Leaf Blower brochure and highlight it seasonally on the Town’s website and social media
* Maintain a current list of all landscapers in the local area and provide brochures each year to remind them of the local requirements for use times and noise limits
* Utilize the current Code Enforcement Inspector, Sanitation Foreman, Environmental Health Inspector, General Foremen and Operations Managers in Highway and Parks and the Park Ranger as enforcement officers increasing the personnel available from one to eight
* Enlist additional assistance from the Health Department for enforcement during business hours and reaffirm the commitment of the Police Department for after-hours enforcement and increased issuance of citations”
The Commissioner asks that we allow him time to try this new approach, and the petitioner is supportive of this, in addition to developing other approaches (as discussed with the Commissioner) going forward.

The subcommittee was impressed by the passion and focus of the petitioner, the Town’s response, the productive collaboration between the petitioner and Town, and the members of the landscaping industry who appeared and spent as much time listening as they did respectfully expressing their concerns.

It is the subcommittee’s belief that we have a reasonably balanced bylaw in place (given the current state of technology), but that enforcement has been lacking. We suggest the new framework of enforcement be adopted, that the Police Department becomes more actively engaged, that data acquisition and sharing becomes cleaner, and that we recognize more resources may need to be provided in the enforcement effort. Finally, the landscaping industry must recognize that it does have to “be its brother’s keeper”, and that an “it wasn’t me, it was them” response will not suffice as the community may eventually lose all patience.

RECOMMENDATION

The subcommittee, by a vote of 4 - 1, recommends NO ACTION on this article.

POST SCRIPT

After the hearings and consultation with Town staff, the petitioner has decided not to move this article.