
Absent: Dennis Doughty, Charles Swartz, John VanScoyoc

Also Attending: Petitioner for WA 22 and 23 Donald Warner, Petitioner for WA 19 Roger Blood, and Karen Martin, Planner in Economic Development Department

The Chair called the meeting to order at 7:00 PM

Agenda:

7:00 pm Article 22 - Amend Article 8.31 of the Town’s General By-laws to prohibit the use of gasoline powered leaf blowers. (Donald Warner, petitioner)

Harry Bohrs gave an overview of the Human Services subcommittee discussion and decision about WA 22 the substance of which is captured quite thoroughly in the subcommittee’s report. It will not be moved but he thanked the petitioner for bringing it up and working with Parks and Open Space Director Erin Gallentine and Department of Public Works Commissioner Andy Pappastergion. He also extended the subcommittee’s thanks to the folks, to people in the landscape industry, who cared enough to come to the hearing, sharing their positions, and respectfully listening to other opinions. This was a very collaborative effort and had a positive conclusion.

Purpose of WA 22 would be to eliminate gas leaf blowers in Town, allow electric only with limit to 67 decibel level, and able to use only 2x a year: in the fall Oct/Dec and in the spring Mar/May. Health, climate change, and noise were three issues that informed this article.

Petitioner is supportive of the DPW Commissioner’s efforts and intentions. Subcommittee voted No Action 4-1.

A MOTION was made and seconded for No Action on WA 22. By a VOTE of 17 in favor, 1 opposed and 7 abstentions, the Advisory Committee recommends No Action on WA 22.

7:05 pm Article 23 - Amend Article 8.31 of the Town’s General By-laws to prohibit blowing leaves and debris onto public property. (Donald Warner, petitioner)
Harry continued his overview of the Human Services subcommittee’s discussion and decision about WA 23. This article is meant to restrict leaf blowers from being used on public ways but will not eliminate gas-powered leaf blowers, however. The way it was written did not fulfill its intent. Leaf removal akin to snow removal from sidewalks.

The subcommittee voted unanimously to recommend keeping the current language of the existing bylaw (SECTION 8.31.3) and adding a new provision.

**QUESTIONS AND COMMENTS**

The Petitioner Don Warner gave a brief presentation that highlighted his amendments to Article 23.

A MOTION was made and seconded for favorable action on WA 23 as amended by the subcommittee. A MOTION was made and seconded to AMEND (favorable action on the Petitioner’s amended language) By a VOTE of in 4 in favor, 20 opposed and 1 abstention, the MOTION fails. By a VOTE of 21 in favor, none opposed and 4 abstentions, the Advisory Committee recommends favorable action on WA 23 as amended by the subcommittee.

**7:25 pm  Article 19 - Amend the Town’s Zoning By-law to allow Accessory Dwelling Units. (Roger Blood, petitioner)**

Carol Levin gave an overview of the Planning and Regulation subcommittee review and recommendation of Warrant Article 19. See the report for full explanation of the Article, highlights of the discussion and amendments to language.

The Petitioner Roger Blood offered a brief presentation.

**QUESTIONS & COMMENTS**

Q: Fire safety provisions in place? A: There are fire safety provisions built in based on current fire codes.

Q: If the person is handicapped, a person can get more space – that special permit once granted, that is grandfathered in. A: Yes it doesn’t have a term. Expect there will be just a handful of these.

Q: Minimum age of principal dwelling unit – someone cannot build a new home with an “in-law apartment or they can’t get a permit to use that apartment? A: There is a 5- year look -back to deter developers from adding value by using the ADU provision. The owner has to have lived in the house for 5 years. Someone cannot build it as new construction in a single family district.
Q: Purposed to legalize currently illegal units that are being rented out – if bylaw passed today, any illegal unit built within the last 5 years – A: Things already existing can be grandfathered in by special permit.  
Q: Does 5 year look-back apply to next owner? I have a relative living in an accessory unit – A: It becomes a legal unit. Annual certification process – they have to recertify 30 days after they purchase to be compliant. 

1. Process to get it built 
2. Process to get it rented 

Built for parents, they pass away – still an ADU (it will always be an ADU) – but you can rent it or move into your ADU and rent your house.

New owner must be an owner occupant of home or its ADU.

Q: Would this allow a developer building a new home to do this, and defer? A: No. 
Q: In the event that there isn’t an owner occupant would re credentialing process say they may not rent the unit? A: Yes within the range of enforcement of the Building Commissioner. Once owner doesn’t live in it, it is no longer permitted.

Q: How do we make sure it is owner occupied? What is the documentation? A: Residential exemptions database – doesn’t work in this instance. Over time it will work. Two requirements – immediate comply and record an affidavit that it is owner occupied at point of being permitted and must stay in compliance with residential exemption.

Two recent studies with lots of data (100 bylaws in the Boston area) – production of this is very low. Lexington and Newton has bylaws for 20 years and they 75 accumulated ADUs (well under 1% of housing stock). There is an average of about 3 per year; very unobtrusive in adding to neighborhood and also just very few.

We don’t allow new construction of new buildings (unattached); only conversions of existing detached buildings. 

Q: Build to 950 square feet- why limited to only special needs – aren’t there other cases when 950 sf would be desirable/needed? What if someone is planning for the future? A: In issuing special permit, you show you have elderly parents; it isn’t inconceivable that you would be planning.

The average size is 900 square feet, Newton is 1000. Brookline is a bit different and apprehension about each unit be built to accommodate students. They really wanted the 700-800. Reached out to Commission on Disability, we felt that this particular use was worth a carve out.
Q: Minimum 6 months for living in the unit? A: Making a distinction for these units between temporary lodging and more permanent housing.

A MOTION was made and seconded for favorable action on WA 19 as amended by the subcommittee. By a VOTE of 24 in favor, none opposed, 1 abstention the Advisory Committee recommends favorable action on WA 19 as amended by the subcommittee.

A MOTION was made and seconded to AMEND strike special language related to 3.2 1 (page 47). By a VOTE of 5 in favor, 17 opposed and 3 abstentions, the AMENDMENT fails.

8:05 PM Article 18 - Amend the Town’s Zoning By-laws to change the definition of “lodger” and permit certain short term lodging. (Scott Gladstone, TMM Pct. 16, petitioner)

Lee Selwyn gave an overview of the Planning and Regulation subcommittee deliberations on WA 18. WA 18 attempts to create a path to legalize certain types of short term Airbnb-like rentals creating de facto investment properties.

Petitioner is proposing that short term rentals be permitted for up to 2 rooms in a dwelling unit that will not have separate kitchens or other facilities. Unit be owner occupied or long term lodger or building manager for all but one night of the short term renters occupancy. Limitations to prevent people from renting out their house without it owner occupied to make income.

Planning Department is in the process of designing their own plan for short term rentals. This article sort of jumps the gun.

There is opposition as a general matter to the proliferation of Airbnb’s, many are out there already and operating illegally. This would put some regulations in place.

Concern that we are allowing people to rent space without putting in place safety regulations and other rules and requirements, like lodging houses and hotels, for example have to comply with. We have zoning rules specifically to limit use – can’t open a store in a residential area.

Subcommittee felt this was premature and felt we should wait to see what Planning Department comes up with so we can make a decision based on more study and broader public input. The subcommittee voted unanimously for NO ACTION on Warrant Article 18.

The Petitioner’s written comments were distributed to the Advisory Committee.

Karen Martin, Planner in Economic Development Department and managing short term rental issue. The department hopes to have something for the 2020 Town Meeting. Warrant Article suggests changing definition of Lodger. Planning is looking at definitions of “short term rental” – using State rules and definitions to have similar terminology. Looking at “owner occupancy” definition and stand-alone
section of zoning by laws specific to short term rentals and conditions required. Possibly define a few
different types of short term rentals and include registration process, regulations, requirements, floor
plans, code inspections, etc. Also doing a great deal of outreach in the community among people who
have an interest in short term rentals or are affected by short term rentals. We think it is worthwhile to
wait for the input staff and Town is collecting and formalizing and review a more comprehensive
proposal.

A MOTION was made and seconded for no action on Warrant Article 18.

Note that a hyphen is required for “short term” when used as an adjective.

By a VOTE of 23 in favor, none opposed and 1 abstention, the Advisory Committee recommends NO
ACTION on WA 18.

8:30 pm Article 24 - Amend Article 3.14 of the Town's General By-laws pertaining to the Commission
for Diversity, Inclusion and Community Relations and Citizen Complaints. (Arthur Wellington Conquest
III, TMM Pct. 6, petitioner)

Michael introduced Ann Braga, the Town’s new HR Director who spoke about her experience and views
related to WA 24. Discussed working with the petitioners to understand the process and timeframes and
how to be transparent. Currently conducting eight active investigations, staff of five, and only 2 who do
investigations and write reports. Try not to use outside counsel. Having a volunteer board to have the
skill and bandwidth to do this sort of work would be concerning.

Q: Is there a model elsewhere we could adopt? A: Yes, “steal” from Boston and work with investigator in
their office. They put out a protocol for the complainant and the person who is alleged to have behaved
inappropriately.

A MOTION was made and seconded to table Article 24 until Tuesday October 29 at 7 p.m.
By a VOTE of 25 in favor, none opposed and no abstentions, the Article is tabled until then.

9:15 pm  Article 33 - Amend the Town’s General By-laws to replace references to “inhabitants” and
“Citizens.” (Neil Gordon, TMM Pct.1, petitioner) Continuation of discussion
9:30 pm  Article 34 - Amend the Town’s General By-laws regarding eligibility for membership on
boards, commissions and committees. (Neil Gordon, TMM Pct. 1, petitioner) Continuation of
discussion

Warrant Articles 33 and 34 were discussed together.

Neil Gordon explained the email exchange Advisory Committee members had to review articles with
Town Counsel and all questions were resolved and satisfied. There was a review and public hearing by
the Committee on Town Organization and Structure (CTOS) and they had comments and amendments. See draft report below:

"[DRAFT] RECOMMENDATION OF THE COMMITTEE ON TOWN ORGANIZATION & STRUCTURE [DRAFT]

Warrant Article 33 would change a number provisions of the Town By-Laws primarily by eliminating the term "inhabitant" currently used in the By-Laws and changing it to "resident", and by amending provisions of the By-Laws by changing the terms "citizens" or "inhabitants" to "the public."

In general, the Committee on Town Organization and Structure agrees with the suggested changes, though it has the following comments and concerns:

A. In Section 1.1.4 of the By-Laws ("Definitions"), the term "inhabitant" is changed to "Resident," but then "Resident" is given a circular definition as meaning "a resident of the Town of Brookline." CTOS notes that a definition such as the following could eliminate circularity and provide some certainty and consistency with State Law (changes from Warrant Article 33 show with strike through and bold).

   d. "Resident" shall mean a resident of the Town of Brookline, as "resident" is defined in G.L. c. 62, §1(t), with "Town" substituted for "commonwealth" in such definition.

This definition would make the definition of a Town "resident" consistent with the definition of a resident of the commonwealth: either someone who is "domiciled" in the Town ("true, fixed and permanent home"; intent to make a place one's permanent home) or someone who maintains a permanent place of abode in the Town (which can include a rental apartment) and spends at least 183 days, or parts thereof, in the Town. See Massachusetts Department of Revenue Technical Information Release TIR 95-7 (Change in the Definition of "Resident" for Massachusetts Income Tax Purposes). Because the term "resident" is utilized primarily to define the permissible membership of boards, commissions and committees, requiring that minimum level of contact with the Town would seem reasonable.

B. The proposed change in Section 3.12.3.10, would have the Comprehensive Plan develop and preserve Town resources consistent with the welfare of "the public" rather than "the inhabitants" of the Town. The petitioner has identified the goals of increasing racial and economic diversity, as well as the importance of protecting the interests of those who own or may seek to own businesses, who may work in the Town, or "are just passing through."

Town Meeting should be aware that expanding the goals of the Comprehensive Plan to benefit "the public" could not only encompass petitioner's salutary goals, but could also have unintended consequences. For example, the proposed change would have the Town’s comprehensive planning process utilize Town resources to enhance the welfare of, for example, (a) those "passing through" Brookline in their automobiles as they commute between Boston and the more western suburbs, and (b) NETA customers and customers of a new marijuana dispensary on Beacon Street, since all of the foregoing are members of "the public." It will not be easy to find the precise language that defines appropriate goals for the Comprehensive Plan. CTOS thus raises the question of whether changing the goals of the Comprehensive Plan should be swept up in a wholesale change of By-Law terminology, as opposed to being the subject of separate discussion and focused warrant article.
C. With regard to Article 3.12.3.21 CTOS believes that, while the language should be broadened to include the public, the importance of civic associations and neighborhood organizations should continue to be recognized as follows:

21. to facilitate and maximize meaningful input to Town boards and officials from the public, including civic associations and neighborhood organizations.

D. The proposed change with respect to Article 3.21.3 (b) would require public meeting notices, agendas and information regarding the contact person for the meeting to be disseminated to "members of the public" who join lists for "electronic notifications (such as by email)." The current By-Law language theoretically limits membership on such meeting notice lists to "citizens." (Another current By-Law provision, Section 3.21.2, provides that public notification lists include "only Town Meeting Members and other Town residents." Article 33 does not propose a change in that language, and CTOS concluded that such change would likely be beyond the scope of Article 33.)

CTOS has asked the Town Clerk and Information Technology Department whether there would be any reason why non-residents could not be added to notification lists regarding public meetings under Article 3.21.3(b), and whether any significant expense would be involved. Including non-residents in such notifications would make meeting notices and agendas available to business owners in Brookline, those who work but do not live in Brookline, and so on. The Town Clerk has responded that he sees no obstacle to including non-residents. The IT Department has not yet responded with regard to the questions of cost.

E. The proposed change to Article 7.9 of the By-Laws would require that "Reasonable action shall also be taken to notify and warn the public" of snow emergency parking bans. The goal would be to notify, among others, employees of businesses in Town.

Snow emergency parking bans are already posed on the Town's website and "reverse 911" calls are made to Town residents. CTOS has asked the Department of Public Works and the Information Technology Department whether non-residents could sign up to receive notification of snow emergency parking bans, either by automated phone call or by becoming a member of an email list and, if so, what expense would be involved.”

QUESTIONS AND COMMENTS

Q. Comprehensive Plan for Brookline encompasses people who shop here, drive here, drive through here, and use services here, in addition to the people who live here. Should our by-laws do the same, because that's what using the term “the public” implies.

A. Take language in State law, it refers to “the Public” in the same context. It is the requirement of individual cities and towns that take into consideration “the Public.”

Concern about the broad nature of “the Public”

Touching a whole lot of things – some are substantive, some broad – too many to be clear about and treating this issue in a wholesale manner is a poor way to legislate.
Two issues – inclusivity of people in the Town or related to the Town, I support but it broadens the scope substantially and can’t support this.

Eliminating the use of “citizen” - makes people feel excluded specifically when it is used.

It seems like we are discussing a solution in search of a problem. What is it we are trying to do here?

WA 34 changes requirements to serve on Boards, Commissions and Committees and addresses inconsistencies. In some cases, you need to be a citizen, a resident, a voter or in some cases it doesn’t even say. Depending on the Board, Commission or Committee, requirement is “to serve” or “at the time of appointment” or “to be nominated.” Each and every change is a substantive change.

Has this proven to be a problem?

The issue with WA 33 perhaps universally in practice the language of the bylaws is not an issue, on the other hand words matter; these are the official words of the Town of Brookline – not inclusive language in most of our bylaws.

I do think some committees do require you to be a registered voter, but not others; it sends a confusing message.

Changes to “resident” – in School Committee it is changed to “member” - still a requirement you have to be a resident; elected is a requirement already woven in there. Not substantively changing what you are doing. Advisory Committee – “as practicable” (is definitely a substantive change) to accommodate what is current now. Change requirement for At Large members to limit it to a residency requirement. Parks and Rec commission is now codified (substantive change of sorts)

Q: Why is school committee treated differently (9 members rather than residents). A: Tracks same language as language that addresses Select Board.

You need to include definition of “the Public” – you are introducing a term without specifying what it means.

Goal to make public participation more inclusive which is great, but that intent needs to be made clear to Town Meeting otherwise they will think this is just an exercise to clean up language in the bylaws. Using consistent language in the by-laws is just one of the article’s goals, but not the entire purpose.

Suggestion to change language “ready, willing, able”

Language is still confusing. Feel like we have had these discussions last time.

A MOTION was made and seconded for favorable action on WA 33.
By a VOTE of 5 in favor, 13 opposed and 7 abstentions, the motion fails.

A MOTION was made and seconded for favorable action on WA 34.

A MOTION was made and seconded to AMEND to strike the words “to the extent practicable” from 2.2
By a VOTE of 4 in favor, 15 opposed and 6 abstentions the AMENDMENT fails.

A MOTION was made and seconded to AMEND to strike the words “to the extent practicable” and add “provided that someone from each precinct is able to serve.”
By a VOTE of 9 in favor, 11 opposed and 5 abstentions the AMENDMENT fails.

A MOTION was made and seconded to AMEND 3.9 to delete “resident” and restore “members” 3.9
By a VOTE of 11 in favor, 9 opposed, and 6 abstentions the AMENDMENT passes.

Scrivener’s error 3.11b, 3.12, 6.8 delete the word “and” between what and what?

By a VOTE of 7 in favor, 14 opposed and 4 abstentions, the Advisory Committee recommends No Action on WA 34.

Announcement: New standing subcommittee on Sustainability to be chaired by Carlos and to begin collecting information to develop some expertise.

Upon a MOTION made and seconded to adjourn, and voted unanimously, the meeting was adjourned at 9:51 pm.

Documents Presented:

Article 18
  • Planning and Regulation Subcommittee Report WA 18
  • From Scott Gladstone, Petitioner for Article 18 “statement of amendment” and Amendments
  • Public Comment WA 18 Pehlke
  • PowerPoint Presentation on WA 18

Article 19
  • Planning and Regulation Subcommittee Report WA 19
  • From Roger Blood, Petitioner for Article 19 an “alternative version of Article 19 which includes three highlighted edits recommended/voted by the Planning Board.” (191017 Art.19 with PB Edits)
  • PowerPoint Presentation on WA 19

Article 24
  • Ad hoc Subcommittee Report WA 24

Articles 22 and 23
• Human Services Subcommittee Report WA 22
• Human Services Subcommittee Report WA 23
• Memo from DPW Commissioner, the final report from the Moderator’s Committee on Leaf Blowers, and a combined John Doggett/Don Warner document
• Public Comment on Leaf Blowers (Note – paper copies of these comments will not be included just shared electronically)
• PowerPoint Presentation on Articles 23

Articles 33 and 34
• Town Counsel Opinion and Petitioner Response
The Moderator has no objections to the enclosed amendments to Article 18. Melissa and Lisa and Polly, please let me know if any additional steps are needed with respect to the SB, AC and PB.

I am enclosing my statement of amendment, which is as follows: “After consultation with the Moderator and hearing the concerns of the Planning Department, Petitioner Scott Gladstone hereby amends the language of Warrant Article 18, as set forth in the enclosed, to (i) reformat the proposed amendment to the Table of Use Regulations, (ii) to correct the reference to the Massachusetts General Laws, and (iii) to add language making it clearer that any registration system required by the Town could include additional regulatory requirements, as is done with respect to Use #7 for Lodging Houses. Petitioner also seeks, through this amendment, to correct typos in the explanation section, as well as fix the statutory reference and to add the reference to Use #7.”

I am also enclosing an edited and clean version of the warrant article, as amended.

I appreciate the opportunity to clean this up with the clearer format and to correct the statutory reference and to make other clarifications.
Petitioner's amendment to Warrant Article 18.

After consultation with the Moderator and hearing the concerns of the Planning Department, Petitioner Scott Gladstone hereby amends the language of Warrant Article 18, as set forth in the enclosed, to (i) reformat the proposed amendment to the Table of Use Regulations, (ii) to correct the reference to the Massachusetts General Laws, and (iii) to add language making it clearer that any registration system required by the Town could include additional regulatory requirements, as is done with respect to Use #7 for Lodging Houses.

Petitioner also seeks, through this amendment, to correct typos in the explanation section, as well as fix the statutory reference and to add the reference to Use #7.

Respectfully Submitted by, Scott Gladstone

[Scott C. Gladstone Signature]
Submitted by: Scott Gladstone and Isaac Silberberg

To see if the Town will amend the Zoning By-Law as follows:

1. By amending Section 2.12.3 – the definition of “Lodger” – by adding the additional language underlined below:

   A person who rents space for living or sleeping purposes, for a period of 30 consecutive days or longer, and who is not within the second degree of kinship to the lessor.

2. By Amending Section 2.12 – “L” Definitions – to add a new item known as “Lodger, short term” after the term “Lodger,” as follows:

   Lodger, short term: A person who rents space for living or sleeping purposes, for a period of fewer than 30 consecutive days, and who is not within the second degree of kinship to the lessor.

3. By amending Section 4.07 – Table of Use Regulations – to allow short term lodgers in certain restricted situations by adding a new use 51C as follows:

<table>
<thead>
<tr>
<th>Principal Uses</th>
<th>Residence</th>
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<td></td>
<td>S  SC  T  F  M</td>
<td>L  G  O  I</td>
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<tr>
<td>51C Within a dwelling unit, which is owner occupied and registered under M.G.L. c. 64G and M.G.L. c. 62C §67 and under any additional registration required by the By-Law as it may be amended from time to time, and conforming to Brookline regulations of this use as they may be promulgated and amended from time to time, the renting of not more than two rooms as a lodging to a short term lodger, without separate cooking facilities and for not more than two short term lodgers. In the case of a dwelling unit occupied by unrelated persons, the sum of short term lodgers and other unrelated persons shall not exceed the limit defined for a family in Section 2.06, paragraph 1. The owner of the dwelling unit, or a Lodger living in the dwelling unit, or a designated property manager must sleep in the dwelling unit being rented to a short term lodger for all but one night of such short term lodger’s rental.</td>
<td>Yes  Yes  Yes  Yes  Yes</td>
<td>Yes  Yes  Yes  Yes</td>
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... or act upon anything else relative thereto

Petitioner explanation
The Building Department currently interprets the definition of “Lodger” under the Zoning By-Law to mean a lodger for 30 days or more. This warrant article makes explicit the interpretation that the Town has been using for the proposition that short term lodging, such as those offered by Air B and B and similar services, are not a permitted use in Brookline. As a consequence, based on complaints, the Building Department has been shutting down advertised Air B and B’s and similar short term rentals.

This warrant article also adds a new definition for “short term lodgers” and adds a new use that explicitly permits short term lodging under conditions similar to those already allowed for lodgers for 30 days or more, which is permitted under the existing Use 51. The proposed new Use 51C, includes the same restrictions as the existing Use 51: renting of not more than two rooms, which rooms cannot have separate cooking facilities, to not more than two short term lodgers and in no event can more than 4 of unrelated persons dwell at one time in a dwelling unit.

The proposed new use would have the following additional requirements:

1. The owner would need to be registered under the Commonwealth’s short term rental registration system created by G.L. c. 64G and 62C, Section 67;

2. The owner would need to comply with any additional registration or regulatory requirements the Town may choose to impose through amendments to the Town By-Law; This is similar to Existing Use #7 for Lodging Houses, which states that the Lodging House use is subject to a license from the Select Board and to applicable Town regulations.

3. The owner of the dwelling unit, or a Lodger (long term) living in the dwelling unit, must sleep in the dwelling unit being rented to a short term lodger for each night of such short term lodger’s rental in order to avoid a scenario wherein (i) an owner-occupier vacates the unit in order to facilitate the short-term lodger or (ii) the owner occupier of a two, three or multi-family building rents the units in which the owner does not live to short term lodgers.

Town Meeting previously accepted the terms of G.L. c. 64G, Section 3A in order to be able to facilitate a local use tax on hotels. By operation of recent amendments to G.L. c. 64G, such taxes are now automatically applicable to short term rentals. That being the case, every Air B&B renter, who has not been shut down by the Town, will in theory be paying the local tax into the Commonwealth and the Town will then start collecting that tax payment as of July 1, 2019. This warrant article will legalize at least some of the uses for which the Town will be collecting that tax.

The primary motivation for starting with the proposed new Use 51C is to permit low and fixed income people to be able to take advantage of short term rentals in order to supplement their income and facilitate their staying in their homes. Such owners may prefer to supplement their income in this fashion, as opposed to taking on long term lodgers as roommates, in order to maintain their autonomy and privacy when the spare bedroom(s) are not rented. Also, long term lodgers may be more difficult to evict if they become a problem for the owner, which is less of a concern when it comes to short term renters. Thus, this proposal has a strong economic justice component.
To see if the Town will amend the Zoning By-Law as follows:

1. By amending Section 2.12.3 – the definition of “Lodger” – by adding the additional language underlined below:

A person who rents space for living or sleeping purposes, for a period of 30 consecutive days or longer, and who is not within the second degree of kinship to the lessor.

2. By Amending Section 2.12 – “L” Definitions – to add a new item known as “Lodger, short term” after the term “Lodger,” as follows:

Lodger, short term: A person who rents space for living or sleeping purposes, for a period of fewer than 30 consecutive days, and who is not within the second degree of kinship to the lessor.

3. By amending Section 4.07 – Table if Use Regulations – to allow short term lodgers in certain restricted situations by adding a new use 51C as follows:

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This warrant article also adds a new definition for “short term lodgers” and adds a new use that explicitly permits short term lodging under conditions similar to those already allowed for lodgers for 30 days or more, which is permitted under the existing Use 51. The proposed new Use 51C, includes the same restrictions as the existing Use 51: renting of not more than two rooms, which rooms cannot have separate cooking facilities, to not more than two short term lodgers and in no event can all more than 4 of unrelated persons dwell at one time in a dwelling unit.

The proposed new use would have the following additional requirements:

1. The owner would need to be registered under the Commonwealth’s short term rental registration system created by G.L. c. 64G and 62C, Section 67;

2. The owner would need to comply with any additional registration or regulatory requirements the Town may choose to impose through amendments to the Town By-Law; This is similar to Existing Use #7 for Lodging Houses, which states that the Lodging House use is subject to a license from the Select Board and to applicable Town regulations.

3. The owner of the dwelling unit, or a Lodger (long term) living in the dwelling unit, must sleep in the dwelling unit being rented to a short term lodger for each night of such short term lodger’s rental in order to avoid a scenario wherein (i) an owner-occupier vacates the unit in order to facilitate the short-term lodger or (ii) the owner occupier of a two, three or multi-family building rents the units in which the owner does not live to short term lodgers.

Town Meeting previously accepted the terms of G.L. c. 64G, Section 3A in order to be able to facilitate a local use tax on hotels. By operation of recent amendments to G.L. c. 62C, Section 764G, such taxes are now automatically applicable to short term rentals. That being the case, every Air B&B renter, who has not been shut down by the Town, will in theory be paying the local tax into the Commonwealth and the Town will then start collecting that tax payment as of July 1, 2019. This warrant article will legalize at least some of the uses for which the Town will be collecting that tax.

The primary motivation for starting with the proposed new Use 51A-51C is to permit low and fixed income people to be able to take advantage of short term rentals in order to supplement their income and facilitate their staying in their homes. Such owners may prefer to supplement their income in this fashion, as opposed to taking on long term lodgers as roommates, in order to maintain their autonomy and privacy when the spare bedroom(s) are not rented. Also, long term lodgers may be more difficult to evict if they become a problem for the owner, which is less of a concern when it comes to short term renters. Thus, this proposal has a strong economic justice component.
Hello Steve: Could you please circulate these comments on WA 18 prior to your hearing tonight? I will try to attend, but wanted to submit written comments as well.

Thank you, Linda Olson Pehlke, TMM Pct. 2

i am writing to ask that the subcommittee vote NO ACTION on WA 18 for the following reasons:

1) The proposed conditions for approval of a Short term rental, namely being an owner-occupier and that that said owner must be sleeping in the home or unit while it is being leased to short term renters, are unworkable and unverifiable. While in theory, the presence of the owner would hopefully tamp down on errant behavior, it will be impossible to establish whether or not the owner was present during the rental, should a complaint arise.

2) Permitting Short term rentals in all residential districts is highly problematic and not well thought out. For instance, as a Condominium Trustee, I’ve heard of many potential problems with short-term rentals in a condominium context, most dramatically, I’ve learned of cases where an emergency arises at a building and the occupants of the short term rental could not be alerted because property management does not have knowledge of the rental or the occupants. Legal experts have alerted condominium boards to the need for very high levels of liability insurance that is required for the unit owner. It seems that both demand on common services (i.e. trash, water, heat, etc.) would be impacted by allowing short term rentals, not to mention the potential for damage to common area property. Then there are the safety and quality of life issues that arise from admitting transient strangers into residential properties with common entrances, etc.

3) As a matter of Town wide public policy, we need to carefully consider the potential impacts to housing availability and housing costs if some of our existing housing stock is converted to serve tourists, not residents. Also, Short term rentals will cannibalize the clientele (and therefore tax revenue) for our existing hotels, bed and breakfast inns, lodging houses, etc. Similar to the end run around the taxi regulations, air bnb facilitates, through technology, an end run around fire, safety, licensing, etc. regulations.

4) Passing this now would grandfather all currently operating short term rentals. This would make any future efforts by the Town to regulate and oversee short term rentals moot. The Planning Department is doing a great job of studying this complex regulatory problem and they should be allowed to continue gathering feedback, working across departments, etc. to make a comprehensive proposal for future consideration. Approving WA 18 would interfere with this work and it would by-pass the necessary community outreach and listening that still needs to occur on this issue.
5) This proposal is specifically tailored to provide relief to one particular client of one of the petitioners. I find that highly offensive and objectionable. Rather than acting in good faith on behalf of the Town and its’ residents as a whole, this proposal is motivated by solving a regulatory action against one short term renter who has hired one of the petitioners.

Please vote NO ACTION on WA 18

Sincerely, Linda Olson Pehlke, TMM Pct. 2
ARTICLE 19

Submitted by: Roger Blood

To see if the Town will amend the Brookline Zoning By-Law as follows.

Add, a new subsection c. to §2.01 - “A” DEFINITIONS, 1. ACCESSORY

c. Accessory dwelling unit “ADU”: A separate and self-contained dwelling unit located in a single family detached building, or in a detached building located on the same lot as a single family building as an accessory and subordinate use to the primary residential use of the property, provided that such separate dwelling unit has been established pursuant to the provisions of Brookline Zoning By-Law, Section 4.05 Paragraph 3.2.

Add a new sub section 5. to §2.15 - “O” DEFINITIONS

5. OWNER-OCCUPIED – Serving as the principal or year-round residence of the property owner of record as defined by the Town Assessor and as further documented in §4.05, Paragraph 3.2.

Add at the end of the sentence in sub section1. of §4.04 - LIMITATION OF AREA OF ACCESSORY USES

, except that an accessory dwelling unit may occupy up to the lesser of 750 square feet of habitable space or 30 per cent of the floor area of the principal building by right or, by Special Permit, up to the lesser of 950 square feet of habitable space or 30 percent of the floor area of the principal building.

After “No accessory use” in sub section 3. of §4.04 – LIMITATION OF AREA OF ACCESSORY USES, add

, except accessory dwelling units,

To change the title of §4.05 to ACCESSORY USES IN RESIDENCE DISTRICTS; ACCESSORY DWELLING UNITS

To add the following new Section 3 to §4.05 – ACCESSORY DWELLING UNITS

3.1 Intent: Accessory dwelling units are an allowed accessory use where they are, by design, clearly subordinate to the principal dwelling unit and meeting the requirements of this Section. Accessory dwelling units are intended to advance the following:

1. To provide flexibility for families as their needs change over time and, in particular, provide options for older adults to be able to stay in their homes
and for households with disabled persons;

2. To increase the diversity of housing choices in the Town while respecting the residential character and scale of existing neighborhoods;

3. To provide a non-subsidized form of housing that is generally less costly and more affordable than similar units in multifamily buildings;

4. To add housing units to Brookline’s total housing stock with minimal adverse effects on Brookline’s neighborhoods.

3.2. Accessory dwelling units in single family owner-occupied buildings shall conform to all the following provisions:

1. **Maximum square footage.** An accessory dwelling unit may be created with up to 30 per cent of the existing habitable space on the property or 750 square feet of habitable space, whichever is less.

   An accessory dwelling unit which exceeds 750 sq. ft. of habitable space or 30 percent of the existing habitable space on the property, whichever is less, may be approved by Special Permit, provided that it does not exceed 950 square feet of habitable space and provided further that documentation is submitted showing that a permanent household member with a handicap or illness, not of a temporary nature, requires the aid of a resident caregiver to aid a family member. This Special Permit may require an additional off-street parking space.

2. **Owner-occupancy.** A property containing an accessory dwelling unit shall be owner-occupied, which requirement may be met via either the principal or the accessory dwelling unit. Qualifying owner-occupancy must be certified as a precondition for receiving a Certificate of Occupancy for the accessory dwelling unit and not less than once per calendar year thereafter, by an affidavit, in a form to be provided by the Building Department and signed by the owner-applicant. Copies of the completed Affidavits of Owner-Occupancy shall be retained by the Building Department.

   Owner-occupancy shall be further certified by inclusion of the subject property in the listing of residential property tax exemptions as maintained by the Town Assessor, beginning not more than 24 months following, as applicable, the issuance of a Certificate of Occupancy for a new accessory dwelling unit or the transfer of ownership for a pre-existing accessory dwelling unit, and continuing for each Fiscal Year thereafter.

   An owner-applicant for an accessory dwelling unit building permit or Special Permit must provide documentation satisfactory to the Building Commission or Zoning Board of Appeals, as applicable, that the owner-applicant has occupied the subject property for not less than five years prior to the application date.
3. **Building envelope.** An accessory dwelling unit may be created in an existing building or accessory building if the building envelope is not expanded and any increase in FAR stemming from the creation of the accessory dwelling unit does not produce a resultant FAR greater than 120% of the allowed FAR in the current Zoning By-Law. An expansion of the building envelope or conversion of the garage to create an accessory dwelling unit shall only be allowed by Special Permit and only if the resultant FAR is no greater than 120% of the allowed FAR in the current Zoning By-Law and all other dimensional requirements are met. The provisions of subsection 1.a. and e. of Section 5.22 shall not apply to the creation of accessory dwelling units.

4. **Exterior appearance.** A building containing an accessory dwelling unit must exhibit no exterior evidence of occupancy by more than one family, including, but not limited to the following:

   (1) Having no more than one means of access/egress visible from the street upon which the property faces;

   (2) Having no more than one street number address; if the accessory dwelling unit has a second mailbox or mail delivery slot, it shall not be visible from the street;

   (3) Having no electric, gas, water meters, or sub-meters other than those serving the principal dwelling unit of the building in which it is situated;

5. **Exterior alterations** are permitted, provided they are in keeping with the architectural integrity of the structure, including but not limited to:

   — (1) The exterior finish material should be the same or visually consistent with the exterior finish material of the remainder of the building;

   — (2) The roof pitch should be consistent with the predominant roof pitch of the remainder of the building;

   — (3) Trim should be consistent with the trim used on the remainder of the building;

   — (4) Windows should be consistent with those of the remainder of the building in proportion and orientation.

6. **Parking.** A single family property with a by right accessory dwelling unit will conform to parking requirements as applicable to single-family homes with no accessory dwelling unit. Existing setback requirements will apply to all parking.

7. **Maximum number of occupants.** The total number of individuals residing in the principal and accessory dwelling units combined may not exceed the number allowed in the principal dwelling unit alone, under Section 2.06 “F” definitions
for family.

8. Minimum age of principal dwelling unit. The creation of an accessory dwelling unit shall only be allowed on properties where the most recent Certificate of Occupancy was granted at least five years prior to the date of application to create the accessory dwelling unit.

9. Conversion of garage space. An accessory dwelling unit that is created by conversion of a pre-existing garage, including an existing garage in a separate structure from the primary residential building, may be approved only by Special Permit. Garage space eligible for conversion to an accessory dwelling unit must have been constructed five or more years prior to the date of application for a permit to construct an accessory apartment as evidenced by an original building permit or other documentation satisfactory to the Board of Appeals. The provisions of Section 5.22, Exceptions to Maximum Floor Area Ratio Regulations for Residential Units 1.e prohibiting replacement of garage parking to a location exterior to the house does not apply to this subsection.)

10. Conversion of accessory structures. An accessory dwelling unit may not be created in an accessory structure, except in a detached garage, as set forth in paragraph 9 of this section.

11. Allowable means of egress. An accessory dwelling unit must have two means of egress that conform to the applicable requirements of the Building Code. If the second means of egress requires an exterior stairway, any such stairway will require a Special Permit and may not exceed more than one story in height nor be visible from a public way.

12. One accessory dwelling unit per lot. No more than one accessory dwelling unit shall be allowed per lot.

13. No separate ownership. No accessory dwelling unit shall be held in separate ownership from the principal structure/dwelling unit; at no time shall an accessory dwelling unit, or the building of which it is a part, be deeded as a condominium unit.

14. Curb cut limit. Accessory dwelling units may not be located on any lot which is accessed from any public or private street by more than one curb cut, except for lots having more than one pre-existing curb cut for a period of at least five years.

15. Minimum rental period. Rental of either the accessory dwelling unit or its associated primary dwelling unit shall be for a term of not less than six (6) months and shall be subject to a written rental or lease agreement.

16. Historic districts. Where a building is located within a local historic district and therefore subject to the procedures required under Article 5.6 of the General By-Law, any decisions of the Brookline Preservation Commission shall take
precedence over the criteria and procedures set forth above, but the Preservation Commission may be guided by the provisions of this Section in addition to its own criteria and procedures.

17. Recording at Registry of Deeds. Before a Certificate of Occupancy is issued, the property owner of any accessory apartment shall record with the Norfolk County Registry of Deeds or with the Land Court a certified copy of the approval, in a form prescribed by the Building Commissioner or, if required, the Special Permit. Certified copies of the recorded documents shall be filed with the Building Department.

18. Change of ownership. When ownership of any residential property containing an existing accessory dwelling unit changes, the new property owner shall within 30 days of the title transfer, file with the Building Commissioner a sworn affidavit attesting to continued compliance with the requirements of this section and all applicable public safety codes, at which time the Building Commissioner shall conduct a determination of compliance with this Section.

The new property owner shall certify annually thereafter on the first business day of January, or upon transfer to a new owner as provided above, continued compliance with the requirements of this section in a form acceptable to the Building Commissioner.

19. Termination. A property owner who chooses to discontinue an accessory dwelling unit shall notify the Building Commissioner in writing within 30 days following such action.

20. Enforcement. A property owner who fails to recertify as required an accessory dwelling unit or otherwise comply with all provisions of this section shall be subject to regulatory enforcement by the Building Commissioner.

The Building Commissioner shall seek advice and counsel from the Director of Planning and Community Development when there is any question in the application of the criteria contained in this Section and in the approval of any special permit for accessory dwelling unit approval.

The Building Commissioner may re-inspect the property for compliance with the Zoning ByLaw and health and safety regulations, including but not limited to when there is a change of ownership.

21. Public listing of approved units. A listing of all accessory dwelling units shall be maintained by the Town in such a manner as to be accessible on the Town of Brookline website.

3.3. Pre-existing unauthorized accessory dwelling units may be approved by the Building Commissioner subject to the following requirements:
(1) The property owner shall submit an application request in a form prescribed by the Building Commissioner;

(2) The property owner must provide evidence, in a form satisfactory to the Building Commissioner, that the accessory dwelling unit was constructed five or more years prior to the date of adoption of this Bylaw section.

(3) The pre-existing accessory dwelling unit must comply with all requirements of the accessory dwelling unit section of the Zoning Bylaw; however, the Building Commissioner may approve an accessory dwelling unit with habitable space not exceeding 30 percent of the floor area of the principal building.

(4) Before approval of an existing accessory dwelling unit, the Building Department shall conduct an onsite inspection for compliance with all applicable Building Code requirements and other applicable provisions of this Section.

To add the following to §4.07 – TABLE OF USE REGULATIONS, following Accessory Uses 51A:

<table>
<thead>
<tr>
<th>Accessory Uses</th>
<th>Residence</th>
<th>Business</th>
<th>Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>51B. Within a detached single-family owner-occupied dwelling in all zones or within an existing garage accessory to that dwelling, an Accessory Dwelling Unit as further defined and limited in Section 4.05, paragraph 2.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

To add, to §5.22- EXCEPTIONS TO MAXIMUM FLOOR AREA RATIO (FAR) REGULATIONS FOR RESIDENTIAL UNITS,

at the end of Section 1. General Provisions, a, before “.”

, except for accessory dwelling units per Section 4.05(2)

at the end of 2 b.,

For purposes of this subsection only, an accessory dwelling unit, as per Section 4.05 paragraph 2 shall not be considered a separate unit.

Or act on anything relative thereto.
PETITIONER’S ARTICLE DESCRIPTION

An accessory dwelling unit (“ADU”) is a self-contained or segregated space within a single-family home, comprised of a kitchen, bathroom and living/sleeping area and subject to size, design, ownership and use restrictions.

In 2009, Town Meeting considered an ADU-authorizing zoning bylaw amendment. While a strong majority voted in favor of that article, it fell several votes short of the 2/3 required super majority for adoption of all zoning articles. This current ADU article for single family homes differs in some respects from the prior article, while adopting some provisions from the Newton ADU ordinance which became effective in 2017.

Under Article __, the principal residence or the ADU must be owner-occupied; the ADU, if granted by right, can be no greater than 750 square feet or 30 percent of the home’s total habitable space, whichever is less, and by Special Permit, under certain conditions may be up to 950 square feet. The property must be under a single common ownership, i.e., it cannot be ‘condo’d’. The exterior of the house must continue to appear as a single-family home and can have only one set of metered utilities.

All approved ADU’s would require initial and periodic certifications of owner-occupancy of the subject property. Based upon the many specific restrictions included in the article, a single-family home containing an authorized ADU would be very different than a two-family home.

In recommending this Article, the Brookline Housing Advisory Board (HAB) has observed the growing popularity of ADU’s in urban, suburban and rural communities, both in Massachusetts and nationwide. This trend is mainly a result of households becoming smaller; the continued aging of our population with a desire of many homeowners to ‘age in place’; and more inclusive definitions of “family”. The AARP, among others, has reported very favorable research on accessory dwelling units, and many of our neighboring communities now authorize and encourage ADU’s.

A review of numerous Greater Boston area communities that have adopted an ADU Bylaw indicates on the one hand significant variations in specific bylaw provisions and, on the other hand, remarkable uniformity in the overall volume of resulting activity, which has been low everywhere. The HAB has found no evidence that these communities have experienced any adverse neighborhood effects.

The HAB sees ADU’s as one component of a strategy that encourages a diversity of housing types to serve many legitimate social, economic and housing needs of our increasingly diverse Brookline citizenry.

In particular, ADU’s are seen as potentially helpful to:
Young families or single working parents seeking stable childcare options;

Middle-aged parents helping adult children to become independent;

Frequent travelers, or retirees who winter in warmer climes, concerned about leaving homes unattended;

Older homeowners seeking to remain in homes, while needing personal assistance/companionship;

Adult children seeking to care for older parents while maintaining independence for both;

Families with disabled members seeking stable and convenient options for in-house care;

Homeowners of all ages struggling to pay their living and home maintenance costs;

Renters seeking lower cost living options. Short term rentals would be prohibited.

In summary, the Housing Advisory Board believes that Article __ will enable some home-owners—especially older adults—to reduce their own housing (or other life) costs and/or for the occupants of ADU’s to live more economically, thereby increasing affordability in general without public cost or further new development.

Finally, this ADU article will promote greater personal safety and security by providing an opportunity for owners of currently unauthorized dwelling units to have their units inspected for fire, health and safety code compliance and allowing their existing illegal units to be legalized.

SELECT BOARD’S RECOMMENDATION

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ADVISORY COMMITTEE’S RECOMMENDATION

XXX
Submitted by: Scott Gladstone and Isaac Silberberg

To see if the Town will amend the Zoning By-Law as follows:

1. By amending Section 2.12.3 – the definition of “Lodger” – by adding the additional language underlined below:

A person who rents space for living or sleeping purposes, for a period of 30 consecutive days or longer, and who is not within the second degree of kinship to the lessor.

2. By Amending Section 2.12 – “L” Definitions – to add a new item known as “Lodger, short term” after the term “Lodger,” as follows:

Lodger, short term: A person who rents space for living or sleeping purposes, for a period of fewer than 30 consecutive days, and who is not within the second degree of kinship to the lessor.

3. By amending Section 4.07 – Table if Use Regulations – to allow short term lodgers in certain restricted situations by adding a new use 51C as follows:

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<th>Principal Uses</th>
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<td>51C Within a dwelling unit, which is owner occupied and registered under M.G.L. c. 64G and M.G.L. c. 62C §67 and under any additional registration required by the By-Law as it may be amended from time to time, and conforming to Brookline regulations of this use as they may be promulgated and amended from time to time, the renting of not more than two rooms as a lodging to a short term lodger, without separate cooking facilities and for not more than two short term lodgers. In the case of a dwelling unit occupied by unrelated persons, the sum of short term lodgers and other unrelated persons shall not exceed the limit defined for a family in Section 2.06, paragraph 1. The owner of the dwelling unit, or a Lodger living in the dwelling unit, or a designated property manager must sleep in the dwelling unit being rented to a short term lodger for all but one night of such short term lodger’s rental.</td>
<td>Yes  Yes  Yes  Yes  Yes</td>
<td>Yes  Yes  Yes  Yes  Yes</td>
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... or act upon anything else relative thereto

Petitioner explanation
The Building Department currently interprets the definition of “Lodger” under the Zoning By-Law to mean a lodger for 30 days or more. This warrant article makes explicit the interpretation that the Town has been using for the proposition that short term lodging, such as those offered by Air B and B and similar services, are not a permitted use in Brookline. As a consequence, based on complaints, the Building Department has been shutting down advertised Air B and B’s and similar short term rentals.

This warrant article also adds a new definition for “short term lodgers” and adds a new use that explicitly permits short term lodging under conditions similar to those already allowed for lodgers for 30 days or more, which is permitted under the existing Use 51. The proposed new Use 51C, includes the same restrictions as the existing Use 51: renting of not more than two rooms, which rooms cannot have separate cooking facilities, to not more than two short term lodgers and in no event can more than 4 of unrelated persons dwell at one time in a dwelling unit.

The proposed new use would have the following additional requirements:

1. The owner would need to be registered under the Commonwealth’s short term rental registration system created by G.L. c. 64G and 62C, Section 67;

2. The owner would need to comply with any additional registration or regulatory requirements the Town may choose to impose through amendments to the Town By-Law; This is similar to Existing Use #7 for Lodging Houses, which states that the Lodging House use is subject to a license from the Select Board and to applicable Town regulations.

3. The owner of the dwelling unit, or a Lodger (long term) living in the dwelling unit, must sleep in the dwelling unit being rented to a short term lodger for each night of such short term lodger’s rental in order to avoid a scenario wherein (i) an owner-occupier vacates the unit in order to facilitate the short-term lodger or (ii) the owner occupier of a two, three or multi-family building rents the units in which the owner does not live to short term lodgers.

Town Meeting previously accepted the terms of G.L. c. 64G, Section 3A in order to be able to facilitate a local use tax on hotels. By operation of recent amendments to G.L. c. 64G, such taxes are now automatically applicable to short term rentals. That being the case, every Air B&B renter, who has not been shut down by the Town, will in theory be paying the local tax into the Commonwealth and the Town will then start collecting that tax payment as of July 1, 2019. This warrant article will legalize at least some of the uses for which the Town will be collecting that tax.

The primary motivation for starting with the proposed new Use 51C is to permit low and fixed income people to be able to take advantage of short term rentals in order to supplement their income and facilitate their staying in their homes. Such owners may prefer to supplement their income in this fashion, as opposed to taking on long term lodgers as roommates, in order to maintain their autonomy and privacy when the spare bedroom(s) are not rented. Also, long term lodgers may be more difficult to evict if they become a problem for the owner, which is less of a concern when it comes to short term renters. Thus, this proposal has a strong economic justice component.
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Warrant Article 33 would change a number provisions of the Town By-Laws primarily by eliminating the term “inhabitant” currently used in the By-Laws and changing it to “resident”, and by amending provisions of the By-Laws by changing the terms “citizens” or “inhabitants” to “the public.”

In general, the Committee on Town Organization and Structure agrees with the suggested changes, though it has the following comments and concerns:

A. In Section 1.1.4 of the By-Laws (“Definitions”), the term “Inhabitant” is changed to “Resident,” but then “Resident” is given a circular definition as meaning “a resident of the Town of Brookline.” CTOS notes that a definition such as the following could eliminate circularity and provide some certainty and consistency with State Law (changes from Warrant Article 33 show with strikethrough and bold).

   d. “Resident” shall mean a resident of the Town of Brookline, as “resident” is defined in G.L. c. 62, §1(f), with “Town” substituted for “commonwealth” in such definition.

This definition would make the definition of a Town “resident” consistent with the definition of a resident of the commonwealth: either someone who is “domiciled” in the Town (“true, fixed and permanent home”; intent to make a place one’s permanent home) or someone who maintains a permanent place of abode in the Town (which can include a rental apartment) and spends at least 183 days, or parts thereof, in the Town. See Massachusetts Department of Revenue Technical Information Release TIR 95-7 (Change in the Definition of “Resident” for Massachusetts Income Tax Purposes). Because the term “resident” is utilized primarily to define the permissible membership of boards, commissions and committees, requiring that minimum level of contact with the Town would seem reasonable.

B. The proposed change in Section 3.12.3.10, would have the Comprehensive Plan develop and preserve Town resources consistent with the welfare of “the public” rather than “the inhabitants” of the Town. The petitioner has identified the goals of increasing racial and economic diversity, as well as the importance of protecting the interests of those who own or may seek to own businesses, who may work in the Town, or “are just passing through.”

Town Meeting should be aware that expanding the goals of the Comprehensive Plan to benefit “the public” could not only encompass petitioner’s salutary goals, but could also have unintended consequences. For example, the proposed change would have the Town’s comprehensive planning process utilize Town resources to enhance the welfare of, for example,
(a) those “passing through” Brookline in their automobiles as they commute between Boston and the more western suburbs, and (b) NETA customers and customers of a new marijuana dispensary on Beacon Street, since all of the foregoing are members of “the public.” It will not be easy to find the precise language that defines appropriate goals for the Comprehensive Plan. CTOS thus raises the question of whether changing the goals of the Comprehensive Plan should be swept up in a wholesale change of By-Law terminology, as opposed to being the subject of a separate discussion and focused warrant article.

C. With regard to Article 3.12.3.21 CTOS believes that, while the language should be broadened to include the public, the importance of civic associations and neighborhood organizations should continue to be recognized as follows:

21. to facilitate and maximize meaningful input to Town boards and officials from the public, including civic associations and neighborhood organizations.

D. The proposed change with respect to Article 3.21.3(b) would require public meeting notices, agendas and information regarding the contact person for the meeting to be disseminated to “members of the public” who join lists for “electronic notifications (such as by email).” The current By-Law language theoretically limits membership on such meeting notice lists to “citizens.” (Another current By-Law provision, Section 3.21.2, provides that public notification lists include “only Town Meeting Members and other Town residents.” Article 33 does not propose a change in that language, and CTOS concluded that such change would likely be beyond the scope of Article 33.)

CTOS has asked the Town Clerk and Information Technology Department whether there would be any reason why non-residents could not be added to notification lists regarding public meetings under Article 3.21.3(b), and whether any significant expense would be involved. Including non-residents in such notifications would make meeting notices and agendas available to business owners in Brookline, those who work but do not live in Brookline, and so on. The Town Clerk has responded that he sees no obstacle to including non-residents. The IT Department has not yet responded with regard to the questions of cost.

E. The proposed change to Article 7.9 of the By-Laws would require that “Reasonable action shall also be taken to notify and warn the public” of snow emergency parking bans. The goal would be to notify, among others, employees of businesses in Town.

Snow emergency parking bans are already posed on the Town’s website and “reverse 911” calls are made to Town residents. CTOS has asked the Department of Public Works and the Information Technology Department whether non-residents could sign up to receive notification
of snow emergency parking bans, either by automated phone call or by becoming a member of an email list and, if so, what expense would be involved.
Warrant Article 19

A Zoning ByLaw Amendment to authorize

ACCESSORY DWELLING UNITS (ADUs)

in Single Family Properties

Brookline Housing Advisory Board
ADU Definition under Article 19

A separate & self-contained dwelling unit with kitchen, bathroom and sleeping area, located in a single family detached building or located in a detached garage on the same lot as a single family building with ADU as an accessory use to the primary residential use of the property
Purpose of Article 19 – Accessory Dwelling Units

• To provide flexibility for home owners as their needs change over time

• To increase the diversity of housing choices in the Town

• To provide a non-subsidized form of housing that is generally less costly and more affordable than similar units in multifamily buildings

• To add housing units to Brookline’s total housing stock with minimal adverse effects on Brookline’s neighborhoods.
ADUs offer many life-cycle housing needs and choices especially for senior homeowners wanting to age-in-place

- Older homeowners seeking to remain in their homes, while needing personal assistance or companionship
- Adult children seeking to care for older parents while maintaining independence for both
- Families with disabled members seeking stable and convenient options for in-house care
- Homeowners of all ages struggling to afford their housing and other living costs
- Young families or single working parents seeking stable child care options
- Middle-aged parents helping young adult children to become independent
- Renters seeking lower cost living options (Short term rentals would be prohibited)
ADUs have broad support in Massachusetts & nationwide

• #2 on short list of Boston Foundation’s housing “Best Practices”  
  *(The Greater Boston Housing Report Card 2019)*
• Authorized in over 100 Massachusetts municipalities
• Authorized in over 2/3 of Greater Boston municipalities
• Recommended by AARP
• Recommended in Brookline’s 2016 Housing Production Plan
ADU requirements will respect the residential character and scale of existing single-family neighborhoods

- Maximum ADU square footage
  - 750 sq. ft. except 950 by Special Permit for long-term illness/disability caregiver

- Occupancy
  - Owner-occupancy by sworn affidavit + residential exemption
  - Occupied by applicant-owner for at least five years
  - Maximum occupancy of both units same as single-family without ADU
  - No short-term rentals; 6-month minimum rental term

- Exterior appearance & alterations
  - One means of access facing street
  - One curb-cut
  - Alterations require design integrity with existing building

- Existing FAR, setback, dimensional rules & limits apply
Other key provisions

- Five-year ‘look-back’ to serve homeowners, not developers
- Single ownership; no condo conversion
- No additional parking required
- Re-certification: Annual + change of ownership
- Required recording at Registry of Deeds or Land Court
- All approved ADUs accessible on Town website
- Special provisions for ‘legalizing’ existing ADUs
Questions?
WARRANT ARTICLE 23
To see if the Town will vote to amend Section 8.31.3.a of Article 8.31 of the Town’s General By-laws (Leaf Blower Control - Limitations on Use)

PROHIBIT THE USE OF LEAF BLOWERS FROM PUSHING LEAVES AND OTHER DEBRIS FROM PRIVATE PROPERTIES ON TO PUBLIC WAYS.
WHY WARRANT ARTICLE 23?

• Common practice for landscapers to blow leaves and other debris on to public sidewalks and streets.
• Debris spreads air borne particles containing many unwanted and toxic pollutants, such as dust, lead, pesticides and fertilizers.
• Debris blown into streets can also be re-suspended by passing vehicles.
WHY WARRANT ARTICLE 23 (continued)

• Pollutants exacerbate asthma, emphysema and allergies, especially in children.
• No reason why leaves and other debris cannot be gathered and removed from a private property instead of a public street.
WHY SHOULD TOXINS FROM PRIVATE PROPERTIES BE IMPOSED ON THE GENERAL PUBLIC?
WHY SHOULD LEAVES AND DEBRIS BE BLOWN INTO THE STREET....

Photo taken September 25, 2019
.... AND INTO CATCH BASINS?

Photo taken September 25, 2019
Photo taken October 21, 2019
Photo taken October 21, 2019
WHY NOT GATHER AND REMOVE FROM THE PRIVATE PROPERTY INSTEAD OF A PUBLIC STREET?
WHY AMEND THE CURRENT BY-LAW?

- Current By-Law (Article 8.31) does not address using leaf blowers on public sidewalks or streets.
- Current By-Law does not address the spread of pollutants caused by blowing into the street.
WHY AMEND THE CURRENT BY-LAW?
(continued)

• Current By-Law was based on a 2016 Moderator’s Committee Report.
• Report references a study “which examined leaf blowing dust plumes ........ being dissipated ..... within 5 to 10 minutes, and not traveling more than 20 – 30 ft. from the source.”
• Dust plumes blown into a street can end up on adjacent properties which are less than 20 – 30 ft. away. Why is this ok?
WHY AMEND THE CURRENT BY-LAW?
(continued)

• Moderator’s Committee Report also states that dust plumes “can be avoided by waiting, or by crossing the road”.

• Why is it okay that Brookline residents, especially children and the elderly, have to wait “5 to 10 minutes” for the plumes to dissipate, or for them to cross the road so as not to inconvenience a landscape company?
WHAT ARE THE AMENDMENTS?

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.
WHAT ARE THE AMENDMENTS?
(continued)

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 public ways or private property not under their control.
PLEASE SUPPORT WARRANT ARTICLE 23.
To: Janice Kahn,  
   Chair, Public Safety Subcommittee of the Advisory Committee

From: John Doggett,  
   TMM P13  
   Chair of Moderator’s Committee on Leaf Blowers

Date: 9/25/2019

WA 22 and 23 Proposed Leaf Blower Ban and Use limitation

I am a TMM for Precinct 13 and was the Chair of the Moderator’s Committee on Leaf Blowers and, as I am unable to attend the public hearing on Thursday due to a prior commitment, I would appreciate it if the Chair would read into the record this email at the hearing.

The petitioner’s proposal to have a year-round ban on gas powered leaf blowers was examined closely by the Moderator’s Committee on Leaf Blowers¹ (MCLB) in 2016 and was found to be not an effective solution.

The Town already has a gas leaf blower ban already (in effect from May 15th though to September 30th and from January 1st to March 15th). The MCLB believed that education and enforcement were the key elements of reducing noise. A civilian enforcement officer in the DPW was recommended who would carry out both the education component, with operators and property owners, and enforcement of the by-law, including issuing warnings and fines. In addition, the Committee recommended that the property owner to be also liable for warning[s] and fines, if the violation is committed on their property by a contractor or third party.

The solutions and changes that the Committee recommended to, and passed by, Town Meeting in November 2016, provided for this new position.

The petitioner has presented examples of a particular complaint during the summer, when the ban is already in effect. I have gathered the complaint data from both the police CAD system and from the DPW for years 2014 YTD to see how the program across the whole of town is working and have summarized it in the chart below:

¹ www.brooklinema.gov/1288/Moderators-Committee-on-Leaf-Blowers
In the chart, the blue bars show the number of complaints handled by the police and the purple bars show those handled by the DPW. The orange bars show the number of complaints that actually resulted in warnings or a fine. For example, in 2018, of the 50 complaints that have been logged (21 by the police and 29 by the DPW) only 10 resulted in a warning and one fine. The remaining 41 complaints are not verifiable for three main reasons: either the officer arrives on scene too late; or the noise was created by other equipment such as hedge trimmers; or the work is being carried out by town employees or contractors who are exempt from the law.

I believe the system that Town Meeting put in place is working. The data show there has been as significant drop in the number of complaints since the initial rush of complaints in 2017, when the DPW program started. In particular, the police workload has decreased by about 65%.

The MCLB also looked at other towns’ experience with leaf blower laws and for those with complete, year-round gas-powered leaf blower bans (typically in California) experience significant problems in enforcing their law. For example, in Santa Monica CA, (population size 92,000, 50% larger than Brookline at about 60,000) who put a ban in place in 2005, has reported over 50 leaf blower complaints a month in 2017, which is about 600 annually\(^2\). This would equate to about 400 complaints a year for Brookline.

A year-round ban just does not solve the problem.

The petitioner believes that new technology, such as the Dewalt DCBL770 battery powered leaf blower, that he suggested, could be used instead as it would be quieter.

I researched this product which is new and seems to be primarily marketed to homeowners for residential use, not commercial applications. There is little user experience available on this product.

The Dewalt DCBL770 is a handheld device and is not sold in a back-pack configuration, which is an essential requirement for commercial operations during the fall and spring clean-up periods. This machine is quite heavy on the hand/arm with the most powerful 12AH battery and would present a challenge for commercial user employees to use all day long.

Battery life is critical for commercial operations. There is no information or user experience on the internet on this subject, so I talked to the manufacturer. Dewalt told me that battery life for their most powerful battery, 12amp/hours, lasts just over one hour at maximum speed. So, a commercial operator would need say 5-8 batteries which cost $250 each, for each machine. In terms of performance, the ratings of airflow 600 cfm and airspeed of 125mph seem good (a 65db Echo machine has about 535cfm and 215mph airspeed), certainly better than what the MCLB tested for an electric blower in 2016, but its actual performance remains a question.

I do not believe, without further testing, that this particular technology is applicable for commercial use and while an interesting development for small property owners, would unlikely not alter the original findings of the Committee. The Committee did test a Stihl BGA 100 electric blower with battery back pack for the operator,

\(^2\) www.smdp.com/city-crackdown-silences-leaf-blowers/160972
performed reasonably well (Appendix 3) but battery life was about 30 minutes and was quite expensive at around $900 per battery.

The Committee believed that battery electric blowers would be the way to go, when the technology, particularly the battery technology comes available with significantly longer life and at a reasonable price. This first look at the Dewalt machine the petitioner suggests does not meet the requirements for daily commercial or town use.

I have attached a copy of the full MCLB report and the appendices which cover other areas of concern expressed by the petitioner, such as emissions (Report p 8, Appendices 4 and 5) which the Committee found to be negligible and dust plumes which were found to subside back to normal readings within 5 – 10 minutes (Report p 8, Appendices 7 and 8).

I urge the Subcommittee to vote for no action on WA22.

Finally, on WA23: most landscapers blow leaves into the street then vacuum them up including all the sidewalk debris. It seems to me that there is only a concern, if the leaves are not vacuumed up relatively promptly. This article could be amended by providing a timeframe in which leaf debris allowed to be on the sidewalk, say by the end of the business day.

I urge the Subcommittee to vote No Action on WA23, if no amendment to allow for temporary leaf accumulation on sidewalks pending removal.

I enclose a copy of the full report and the appendices for review.

Thank you,

Sincerely,

John Doggett
8 Penniman Road
TMM P13
Chair, Moderator’s Committee on Leaf Blowers
Date: October 1, 2019  
To: Human Services Subcommittee of the Advisory Board  
From: Don Warner, Petitioner of Warrant Articles 22 and 23

The letter from John Doggett dated September 25, 2019 read after my testimony at the September 26 Subcommittee hearing, contained a number of misleading statements:

1. Mr. Doggett is suggesting that the photographs of leaf blowing in my PowerPoint presentation are outliers, and that the data he collected proves a significant drop-off in complaints.
   - My photographs were representative of weekly violations I have observed the past two summers. I have called in these and other violations and emailed DPW a list of the violators in just my immediate neighborhood. To my knowledge, none of my complaints were responded to and the violating landscapers on my list continued to use gasoline fired leaf blowers. After making numerous calls and reporting the names of the landscape companies, I gave up.
   - I also learned that many other Brookline citizens have done the same. To cite the “data” which shows a drop-off in complaints is highly misleading. To state that “the system that Town Meeting put in place is working” does not reflect reality.

2. Mr. Doggett cited a 2017 article from the Santa Monica Daily Press regarding the City’s leaf blower ban and suggested that such a ban “would equate to about 400 complaints a year in Brookline.”
   - This inference is misleading in that there is no correlation between Santa Monica and Brookline.
   - In fact, the first two paragraphs of this article give further support to a ban in Brookline. (underlining added):

   “The City’s aggressive pursuit of leaf blowers in Santa Monica seems to be paying off – cases were down in 2016 and in the beginning of this year. At the moment, 86 leaf blower cases are under investigation, according to an information item posted on the City’s website.

   For 2017, Code Enforcement has averaged about 50 leaf blower cases a month – about half the rate of previous years. The City says that could be because of significant rainfall during the early part of the year or because of a previous crackdown: officers have been issuing fewer warnings and more tickets.”

3. Mr. Doggett referenced the Moderator’s Committee Leaf Blower (MCLB) report indicating that the dust plumes from leaves and debris blown into the street were found to be negligible and subsided within 5 to 10 minutes.
   - Page 9 of the MCLB report also states that these dust plumes “can be avoided by waiting, or by crossing the road”. Why should a citizen of Brookline, especially the elderly or children, have to accommodate the convenience of landscapers?
   - There is also scientific evidence that these dust plumes contain toxic pollutants which remain suspended long after they are air borne.

Please read this letter at the upcoming subcommittee and Advisory Board meetings, and enter it into the records.

Thank you,

Don Warner
Recently submitted Warrant Articles 22 and 23 propose a ban on the use of gas powered leaf blowers in Brookline and restrict use of any type of leaf blower on sidewalks or ways contiguous to such property. I am writing at the request of Town Administration to provide a summary of previous analysis and discussion regarding the use and regulation of leaf blowers on public and private land in order to provide some context for review by the Town. The current bylaw is the result of extensive review and public process. Additional changes to the bylaw may result in unintended consequences including less clean-up of the public way that is often accomplished by homeowners in front of their respective properties.

Over the last 10 years, the Town has convened numerous committees, completed an exhaustive analysis, changed operating practices, created an outreach program, increased fines and written/rewritten the bylaws associated with the use of gas powered leaf blowers. The last report, published in 2016 by the Moderator’s Committee on Leaf Blowers, was the result of over 16 public meetings and research regarding the use, noise, health effects, property owner and service provider responsibilities, enforcement, communication, efficacy, best practices and climate impacts of leaf blowers. The effort led to bylaw and enforcement changes. The current bylaw, Article 8.31 Leaf Blowers, is a balance that limits all leaf blower use to equipment under 67 decibels and prohibits the use of gas powered leaf blowers except between March 15 and May 15 and between October 1 and December 31. It limits hours of operation to 8 am – 8 pm Monday – Friday and 9 am – 6 pm Saturdays, Sundays and Holidays. Parcels less than 7,500 square feet can have no more than 2 leaf blowers used simultaneously. Enforcement is now applicable to both property owners and landscape contractors, if applicable. The bylaw was amended as such, and regulations set forth by the Commissioner of Public Works. The provisions do not apply to the use of leaf blowers by the Town and its contractors or to non-residential property owners with parcels that contain at least five acres of open space. The rationale for the exclusion is due to the nature and scope of work, public safety, accessibility and expediency unique to the Town. However, the Parks and Open Space Division makes every effort to use the lowest decibel and emission rated equipment for the performance standard required. A brief reminder of the applications for leaf blowers in the public realm is included below.
As the Director of Parks and Open Space for the community I believe that it is our responsibility to research and implement use of the lowest decibel and emission rated equipment for the performance standard required. Each Division crew uses battery operated leaf blowers for tasks where that tool is sufficient to accomplish the work. We are now using low emission and decibel rated equipment and have met with manufacturers to press that they improve their technology to provide greener options. While elimination of gas powered leaf blowers is not yet practical or feasible for the Town, we have made and continue to make operational adjustments that are quieter, greener and still efficient. The Division has 16 battery operated leaf blowers and has developed an understanding of the uses, strengths and limitations of the equipment. The battery operated leaf blower runs for approximately 30 minutes before losing its charge. Recharge on the battery takes 4 hours.

**Town Use of Leaf Blowers**

The Town utilizes leaf blowers to complete a myriad of necessary tasks in an efficient and effective manner. Backpack and handheld leaf blowers are an essential tool used by Public Works staff and contractors to accomplish a number of daily tasks in parks, playgrounds, town grounds, school grounds, public roads, sidewalks, parking lots, and commercials areas. The Town manages over 120 sites comprised of 600 acres of land and 200 miles of walking surfaces on public sidewalks, lined by over 11,000 trees, that need to be clear of leaves and debris. These facilities have a variety of surfaces such as concrete sidewalks, granite pavers, mulched areas, asphalt, gravel and lawn. These surfaces require clean-up of grass clippings, leaves and other debris. Leaf blowers enable workers to perform this task effectively and efficiently, especially in mulched and gravel areas, under trash receptacles, along fence lines and stairs/corners that cannot easily be raked or swept. Leaf blowing, as compared to manual raking, has the added benefit of minimizing the damage to newly installed plants and flowers when removing leaves and other debris from landscaped areas. Leaf blowers also minimize damage from rakes and brooms on painted court surfaces, synthetic turf and the running track. In addition, the commercial areas in Brookline, including Coolidge Corner, Washington Square, St. Mary’s and Brookline Village, have a large number of paved surfaces which require clean-up on a daily basis. This cleaning involves the collection and removal of cigarette butts, paper products, food waste, leaves and other vegetative debris. Many of these are in hard to reach locations that can be dislodged quickly and efficiently with leaf blowers.

During fall leaf season and spring clean-up season about half of the Park and Open Space Division and Highway Division staff will average about 5-6 hours per day using leaf blowers. Wet leaves require higher powered leaf blowers for removal. This is a critical management practice as part of the Town’s storm water management program. Leaves that are not collected will not only cause slip and fall hazards, but clog catch basins and increase flooding problems. Leaf blowers help to make this effort possible within our limited maintenance staffing.

The Department of Public Works researched and tested the operational impact of using handheld tools or less powerful blowers. Our finding was that it would take 3-5 times longer to complete the assigned tasks if we were restricted from using handheld and backpack blowers. We estimate that a single employee with one leaf blower is able to do what it would take three to five employees using rakes, brooms and shovels in the same amount of time. Without the use of leaf blowers, the same level of labor effort would result in the completion of only about 20-30 percent of the assigned task. Furthermore, the use of rakes or brooms is much more physically demanding than the use of a blower, greatly adding to the fatigue factor of doing this type of work and further degrading productivity. We would expect to see an increase in muscle strain and repetitive motion injuries within the DPW workforce. If the Town bans leaf blowers with no exemptions, the Public Works Department would have to compensate for lost efficiencies by significantly reducing the frequency of maintenance, adding additional maintenance staff, contracting for these services or a combination of these measures.
Communication and Enforcement

The Moderator’s Committee recommended the creation of a Code Enforcement Officer to enforce the leaf blower bylaw when amended in 2016. The Select Board and Town Administration determined that it was not financially feasible and assigned additional duties to the Department of Public Works to include communication, investigation, resolution and enforcement of the Leaf Blower Bylaw. A leaf blower bylaw brochure has been created and sent out to local landscape companies, and has been published both online and in the annual DPW guide. Enforcement responsibilities are the jurisdiction of Public Works, Police, Building and Health Departments.

Overall complaints regarding the use of leaf blowers have declined since the bylaw was amended in 2016. In 2017, DPW Code Enforcement personnel were trained and assigned the responsibility to document and investigate complaints regarding leaf blowers. Between October and December of 2017 there were 26 complaints reported, of which 5 were documented violations. In 2018 there were 29 complaints, of which there were 8 documented violations. Of the total complaints, 7 came in after the incident or outside of working hours and were unable to be substantiated. To date there have been 40 complaints in 2019 with 4 violations documented. In 2019 there were 20 complaints that came in after the incident, outside of working hours or while staff were occupied with other responsibilities such as household hazardous waste day and the complaint could not be substantiated. In those instances where the date, location and company violating the bylaw were reported, the Code Enforcement Officer was able to reach out to the company and inform them of the bylaw and repercussions if found in violation in the future. The other complaints resulted in no violation found. In those cases there are often other pieces of equipment from large construction vehicles to weed whackers that were causing noise disturbance, but are not a violation of the leaf blower bylaw.

Education and enforcement will be important to the success of the Leaf Blower Bylaw moving forward. The Department of Public Works has the leaf blower guide on its homepage and is planning to reach out to local contractors prior to the end of September to ensure that every effort is made to educate both home owners and service providers about the established parameters in Brookline regarding leaf blower use.

The Department of Public Works is available to discuss best practices, improvements and coordination as we move forward. We continue to research new work methods, equipment and technology in order to implement use of the lowest decibel and emission rated equipment for the performance standard required.
INTEROFFICE MEMORANDUM

To: Harry Bohrs, Chair - Human Services Subcommittee
From: Andrew M. Pappastergion
Date: October 1, 2019
Re: Warrant Article 22 – 23, Leaf Blowers
Cc: Melvin Kleckner, Town Administrator
    Melissa Goff, Deputy Town Administrator
    Kevin Johnson, Director of Highway & Sanitation
    Erin Gallentine, Director of Parks & Open Space

Warrant Articles 22 and 23 seek to further amend Article 8.31 of the Town of Brookline Bylaws regarding the use of leaf blowers by property owners and private landscape contractors within the Town. The proposed amendments would ban the use of all gas powered leaf blowers completely, with the exception of uses by the Department of Public Works, and prohibit the intentional deposition of leaves and other debris onto the public way presumably from the use of all leaf blowers, including gas and electric machines. Your committee has received previously a memo from Erin Gallentine, dated September 19, 2019, which reported in great detail about the history of leaf blower use and Town Meeting actions, the DPW’s use of leaf blowers for the maintenance of public facilities, the research and study undertaken by the DPW regarding the use and efficiency of alternately powered machines and the Town’s efforts at educating both property owners and landscape contractors about the latest Bylaw requirements. The memo also provided detail regarding the current complaint-driven enforcement strategies and documented some of the problems associated with the use of this methodology. This memo will expound on the DPW’s experiences at enforcing the current regulations and perhaps provide some alternative solutions going forward.

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 Department of Public Works would urge that the Advisory Committee and the Select Board endorse this new approach for a dedicated trial period to determine whether this could achieve better compliance with the current Bylaw.
OFFICE OF THE TOWN ADMINISTRATOR

MEMO TO: Select Board
FROM: Mel Kleckner, Town Administrator
DATE: October 4, 2019
SUBJECT: Host Community Impact Fee Funding

The state law creating the framework for cultivation and retail sale of marijuana authorizes “host” cities and towns to assess a community impact fee on a licensed establishment of up to 3.0% of gross sales, which must be reasonably related to the costs imposed upon the municipality by the operation of the marijuana establishment. The Town has negotiated such a provision in the Host Community Agreement with NETA and has begun to receive community impact fees. To date in Fiscal Year 2020 (since July 1, 2019), the Town has received $663,843 in community impact fees. We project the total sum of community impact fees from NETA to be approximately $1,194,918 in Fiscal Year 2020.

While expenditures from these funds are restricted by law, they are still considered municipal revenue that must be appropriated by town meeting before they can be expended. We are planning to submit a proposed appropriation for the FY 2020 Community Impact Fee revenue under Article 3 of the upcoming Special Town Meeting commencing on November 19, 2019. It is expected that this funding will cover a host of expenses to support direct mitigation and other expenses, including substance abuse prevention and public health programming. I have attached a very rough table documenting some of the requests we have received to date for this funding. Please note that much more consideration and input needs to happen before we can submit a detailed appropriation recommendation for the November town meeting. We are also exploring the local acceptance option to dedicate a portion of the collections from the community host agreement payments to a general or special purpose stabilization fund established under G.L. c. 40 § 5B. In addition, I am recommending that the Town find a way to expend some immediate resources to address the impacts from NETA’s operations in Brookline Village in advance of the town meeting. One mechanism is to seek a Reserve Fund Transfer that can be reallocated among the applicable department budgets. Another is to simply expend resources available within existing Town department budgets that can be “replaced” with community impact funding at the upcoming Special Town Meeting. I tend to favor the second of these two options.
Specifically, I recommend that $40,000 in funds be made available immediately or advanced from existing departmental general fund budgets to provide funding over the next couple of months for the following expenses:

- $7,000 in police overtime to support a dedicated bike unit and additional coverage as necessary
- $5,000 in neighborhood parking enforcement
- $9,000 in Police licensing/administrative support
- $2,500 in DPW overtime to support a dedicated litter crew
- 12,000 for additional “Big Belly” trash receptacles
- $4,500 in DPW overtime to support additional park ranger coverage

I look forward to discussing this matter with you and the Advisory Committee as soon as possible.

cc: Michael Sandman, Chair, Advisory Committee
Executive Summary

The Moderator's Committee on Leaf Blowers was organized in December 2015, following a November 2015 Town Meeting motion to refer Warrant Article 10, a ban on leaf blowers, to a Moderator's committee.

The Committee submitted a preliminary report to May 2016 Town Meeting, recommended the filing of two Warrant Articles for the November 2016 Town Meeting (WA23-Change to Noise Control and Leaf Blower By-laws, and WA24-Resolution with Respect to Administration of the Leaf Blower By-law), and submits this Final Report. The Committee has recently accepted proposed amendments to WA23 and WA24, as offered by the Advisory Committee, and these comprise the recommendations of the Committee reported herein.

This Report is distributed in the Combined Reports, but the Appendices and Additional Information because of size are not distributed on paper but are available electronically. The Report, the Appendices and Additional Information are all on the Moderator's Committee on Leaf Blowers page on the Town website – www.brooklinema.gov/1288/Moderators-Committee-on-Leaf-Blowers.

The Committee recommends changes to the By-law Article 8.31 -- Leaf Blowers (WA23), and, accordingly, technical changes to By-law Article 8.15 Noise Control By-law, as follows:

1. Combine all regulations regarding leaf blowers into one By-law, Article 8.31, by moving the relevant sections of the Article 8.15 Noise Control By-law into the amended Article 8.31;
2. Make the property owner, or occupant if the property is leased, or manager in control of the property (e.g. a condo association) responsible for allowing any violation that is committed by an agent or contractor, in addition to holding the agent or contractor responsible for any leaf blower By-law violations;
3. Provide that the first offense for each party (property owner and contractor) result in a warning; and that subsequent offenses receive $50 - $150 fines each;
4. Change the Fall start date for permitted use of gasoline powered leaf blowers from September 15th to October 1st, and the end date from November 30th to December 31st;
5. Change the weekend and holiday use end time from 8pm to 6pm;
6. Limit the number of simultaneous leaf blowers in operation, to two, on lots of 7,500 square feet or less;
7. Retain the current 5 acre exemption for Summer use of gasoline powered leaf blowers;
8. Retain the 67dBA noise limit for leaf blowers;
9. Retain an anonymous complaint process;
10. Enable By-law exemptions, at the discretion of the Board of Selectmen;

The Committee also recommended a Resolution (WA24), that the Board of Selectmen consider assigning additional leaf blower By-law compliance and enforcement duties to the Sanitation Division of the Department of Public Works, to include:

1. Taking calls during Town Hall business hours;
2. Investigating and attempting to resolve complaints with the parties involved;
3. Working with the landscape service provider community to build awareness of noise concerns, help further the use of best practices and promote use of protective equipment for operators;
4. Working with the Police Department Community Service Officer designated to support leaf blower complaint resolution;
5. Issuing warnings and citations, as appropriate;
6. Calling on the Police Department for support and/or enforcement, as appropriate;
7. Tracking, monitoring and reporting, periodically, statistics and resolutions;
8. Communicating and educating Town residents as to their responsibilities to reduce leaf blower noise;
9. Recommending regulation changes, as appropriate;

By upgrading an existing position, rather than creating a new one, the Committee felt that this would require only a modest additional expense while making a significant contribution to increasing compliance and reducing noise from leaf blowers.

Data Gathering
During its data gathering phase, the Committee conducted an on-line survey of town residents, through the Town's website, between January and March, 2016. For purposes of receiving public feedback and comment, this survey was considered by the Committee as a complement to the public hearing process. The Committee received over 1,300 responses and over 3,600 comments.

By a wide margin, respondents did not favor a complete gasoline powered leaf blower ban, and did not favor further significant restrictions on leaf blowers.

It was reported by many that noise is their primary concern, and that enforcement of the current By-law is ineffective. Many felt that calling the police was a barrier to reporting noise violations. Also, many commented that excessive use that is currently legal (e.g., excessive cleaning or sweeping of sidewalks), is not addressed by the current By-laws.

The Committee found that complaints to the police average about 120 per recent year. The Committee's analysis of these complaints showed that over 50% of calls made resulted in "nothing found" or "OK", meaning that these calls had no impact on noise reduction. Only about 10 citations have been issued annually. (In 2016, through September 30th, just two citations have been issued.)

With the backdrop that the town has over 8,300 single/two/three family residences and apartment and condominium buildings, and over 250 landscape service providers active in town, the Committee concluded that compliance through education should be its primary focus.

The Committee felt that a two-pronged strategy for compliance and enforcement was needed to have significant impact on reducing noise: Responsibility by the Property Owner and (primarily) non-police education and enforcement of leaf blower use in Brookline.

Property Owner Responsibility
Under the present By-law, the operator of a leaf blower is liable for any violation. Accordingly, if a property owner contracts with a landscaper, the property owner is not held responsible.

The Committee believes that taking the responsibility by the Property Owner for a violation committed on the owner's property, is key to increasing leaf blower By-law compliance.

The Committee felt that with this shift in responsibility, that a written warning for the first offense would
encourage property owners to advise their contractors of a need to comply with the law and give the property owner and the contractor time before a second offense might be committed, for the contractor to come into compliance.

**Non-Police Enforcement**

By resolution, the Committee is suggesting that the Board of Selectmen consider assigning responsibility for Leaf Blower By-law enforcement to the Sanitation Division of the Department of Public Works. The division would take on two roles: increase compliance through communication/education, and investigate complaints and enforce the By-law, with assistance from the Police Department. The Committee believes that these efforts would be of modest cost, but could substantially increase By-law compliance and, accordingly, noise reduction.

**Other Provisions**

Some modest changes are proposed in WA23. These are the increase of “quiet time” in the Fall by extending the Summer prohibition of using gasoline powered leaf blowers until October 1. Also the weekend and holiday operating hours have been reduced, changing the allowed time from 8pm to 6pm.

A limit of two leaf blowers being used simultaneously on lot sizes of 7,500 sq. ft. or less has been included, as requested by a number of residents. The Committee (in live tests of leaf blowing in Larz Anderson Park) found that two blowers make little additional perceptible noise and are more time efficient than a single blower.

The proposed amended By-law would permit an exemption from the By-law, by applying to, and approval by the Board of Selectmen. The Committee felt, for example, that a school on less than 5 acres, which is excluded from the current exemption, might appropriately desire to operate equipment in the summer, to clear playgrounds or playing fields.

**Introduction**

The November 2015 Special Town Meeting considered Warrant Article 10, which proposed banning operation of all leaf blowers in Brookline. A proposed amendment, accepted by the Petitioners, would have continued an exemption for the Town. Town Meeting voted to refer the subject matter of Article 10 to a Moderator’s Committee. Accordingly, the Moderator appointed a seven member committee: John Doggett TMM P13 (elected Chair), Dennis Doughty TMM P3 (elected Secretary), Neil Gordon TMM P1, Benedicte Hallowell TMM P15, Jonathan Margolis TMM P7, Faith Michaels TMM P5, and Maura Toomey TMM P8. The Committee was organized in December 2015, and adopted the following charge:

“To review and evaluate the provisions of the Town’s By-laws, Article 8.15 – Noise Control (with respect to Leaf Blowers), and Article 8.31 - Leaf Blowers. The Committee will consider the Selectman’s Noise By-Law Committee report, leaf blower abuses, inappropriate uses, best practices, provisions used in other towns, property owners’ responsibilities, landscaping service provider responsibilities, Town responsibilities, enforcement issues, and other relevant matters.”
Summary of Meetings and Activities

Through 10/26/2016, the Committee met 17 times, including 2 public hearings and an observed a live test event of leaf blower operations, in Larz Anderson Park. The Committee also received responses from 1,312 residents from an on-line leaf blower survey that the Committee sponsored.

The Committee divided its work into three phases: data gathering; analysis and solutions; and recommendations and report. The Committee’s goal was a final report and, if indicated, warrant article(s), for the Fall Town Meeting in November, 2016.

Meeting agendas included:

- Review of the 6/24/2015 Selectman's Noise By-law Committee's report and findings;
- Review of current noise control and leaf blower regulations Articles 8.15 and 8.31;
- Public hearing on the subject matter of Warrant Article 10, current noise and leaf blower by-laws, and related matters;
- Examination of leaf blower complaint data;
- Review of police enforcement activities;
- Review of the results of a 16 question online survey
- Discussion of the leaf blower regulations of more than 20 other municipalities;
- Evaluation of noise levels and leaf clearing efficiency of different machines (both gasoline and electric) in a live trial conducted by the Parks & Recreation Department;
- Learning about technology developments for noise and battery improvements from a leading manufacturer;
- Meeting with various Town officials and employees, to discuss leaf blower operations, enforcement, health issues related to leaf blower operations, and the legal aspects of current and proposed regulations;
- Consideration of a variety of solutions for leaf blower noise mitigation; Drafting of two warrant articles (By-Law amendment and a Resolution related to mitigation and enforcement) for November 2016 Town Meeting consideration.

Current Leaf Blower Regulation

Currently, there are two By-laws that regulate leaf blowers and leaf blower use: Article 8.15 – Noise Control\(^1\) and Article 8.31 – Leaf Blowers\(^2\).

Article 8.15 limits the sound level and operational hours of portable leaf blowers. Portable leaf blowers are limited to 67dBA or below sound level, which must be indicated by a sticker on the device, either from the manufacturer (for machines after model year 2010) or from the Town, through testing by the DPW. Operational hours are restricted to between the hours of 8am to 8pm Monday through Friday, and from 9am to 8pm on Saturdays, Sundays and holidays.

Article 8.31 further limits the operation of gasoline powered leaf blowers, to the periods between March 15th and May 15\(^{th}\), and between September 15th and December 15\(^{th}\), in each year.


Exceptions to this provision are:
- Use of leaf blowers by the Town and its contractors;
- Use by nonresidential property owners with parcels that contain at least five acres of open space;
- Use of leaf blowers in an emergency declared by the DPW Commissioner.

Article 8.31 may be enforced by a police officer, Building Commissioner (or designee), DPW Commissioner (or designee), or Director of Public Health (or designee), and provides for a warning or $50 fine for the first offense, $100 for the second offense and $200 for the third and subsequent offenses.

Public and Official Input
The Committee gathered and received public comment and input from eight sources:
- Public hearings;
- Public attendance at Committee meetings;
- Online leaf blower survey;
- Written submissions;
- Town officials;
- Officials from other towns;
- Live field test of various leaf blowers,
- Stihl, a manufacturer of electric and gas powered leaf blowers.

In its 17 Committee Meetings, including two public hearings, the Committee heard from over 30 members of the public, received eight e-mailed comments, met with nine Town officials, one manufacturer representative, six officials from other towns (interviewed by individual Committee members), and 1,312 residents of Brookline, in an on-line survey sponsored by the Committee.

Current Situation
The Committee took stock of the town's current situation concerning the use of leaf blowers, and particularly the Fall and Spring leaf clean-ups, to identify issues that might be addressed by the Committee.

On-line Survey

Background
With the help of the Town's IT Department, the Committee sponsored an on-line survey (see Appendix 1) for town residents, using Survey Monkey and accessed via the home page on the Town's website.

The survey was self-selecting and therefore the results are not held by the Committee to be statistically valid. However, the Committee does believe that the responses received are indicative of residents' opinions.

1,312 residents completed the survey, and of those, 1,025 were completed with street name, allowing for analysis by Precinct, by question (see Appendix 2).
Over 3,600 comments (see Additional Information) were received.

**Survey Highlights**
The use of leaf blowers for Fall clean-up, and the associated after-the-snows Spring clean-up, did not concern most survey respondents (see Appendix 1, Question 12). There is a general recognition that the extensive Fall leaf drop we experience, needs to be cleaned up using leaf blowers, although a minority disagreed.

Respondents were asked to rate the impact of leaf blowers on them, considering noise, air quality, health and misuse. Most ranked noise as having the most important impact (see Appendix 1, Question 5).

Respondents were asked if they were in favor of a complete year round ban of gasoline powered leaf blowers (see Appendix 1 Question 8) and a majority were opposed to a ban.

Respondents were asked if they were satisfied with the current restrictions on leaf blowers (see Appendix 1 Question 10), and by a small majority, respondents were satisfied.

Respondents were asked if they favored additional restrictions on leaf blowers (see Appendix 1 Question 11), and a significant majority said that they opposed further restrictions.

A significant majority of respondents rated education aimed at mitigating misuse by landscapers and homeowners as moderately or extremely important (see Appendix 1 Question 7).

And finally, on the issue of exemptions to the By-law (see Appendix 1 Question 9), a majority of respondents favored no exemptions, whereas others favored exemptions for the Town, large open space areas, and institutions.

**On-line Survey Summary**
The survey responses, combined with public hearing input, and correspondence, led the Committee to the preliminary conclusion that leaf blower noise is the primary concern of residents, that there is little appetite for a ban or significantly increased restrictions on leaf blowers, and that education has a significant role to play in any solution to the noise problem.

**Technical Considerations**

**Background**
The Committee felt it important to experience leaf blowers in action so that it could better assess the trade-offs of noise, versus speed, versus efficiency, of different machines. In addition, the Committee wanted to examine electric battery powered machine technology, as much input was received on this subject from residents.

The Committee, with the help of the Director of Parks and Open Spaces and a representative of the Stihl Company, a manufacturer of both gasoline and electric leaf blowers, devised a series of outside demonstration tests, performed by Parks and Open Spaces staff, which was held in Larz Andersen Park (see Appendix 3).
The Parks and Open Spaces Department set out two 20ft squares of leaves in Larz Anderson park, on which to perform tests and do sound level measurements. Seven leaf blower models and types and a mulching mower were tested, 5 of the leaf blowers were gasoline powered, and of different power/noise levels, and two were electric, one corded and one battery powered.

The tests were designed to answer a number of questions raised by the Committee and the public:

- How noisy are the various machines, in sound level as well as pitch?
- Is it better to have a more powerful, noisier machine doing a faster job, than a less powerful, quieter machine running for longer?
- Is an electric machine quieter than a gasoline powered one?
- Is an electric machine as effective as a gasoline one?
- How much faster are two leaf blowers than one?
- Is the noise level of two machines significantly greater than that of one?
- Which machines perform better clearing leaves from a hedgerow?
- Is mulching leaves better (i.e., quieter and more efficient) than blowing them?

**Results**

Generally, the more powerful the blower, the more leaves were cleared in a given time period. The most powerful and noisiest machine (Redmax 77dBA) cleared twice the volume of leaves as the least noisiest gasoline machine (Echo 65dBA) and 12 times more than the corded electric (Toro 68 dBA).

Two blowers working at the same time were at least 50% more effective than one blower, but did not produce significantly more perceptible noise. In fact, when one blower was shut off Committee members could barely discern the difference in sound level of one vs. two machines in operation at the same time. Also, the two most powerful (and loudest) machines cleared only about 16% more leaves than the two quietest gasoline machines.

At 56 dBA, the electric battery model was much quieter than all the other models. However, the low power, short battery life (about 30 minutes on full boost) and considerable expense of this unit (each battery costs around $900) make it not viable for widespread commercial use at this time.

**Technical Considerations Summary**

Having heard a range of machines at different decibel levels, the Committee felt that the machines that conform to the current noise level restriction of 67dBA optimized an acceptable level of noise and a reasonable level of efficiency.

As two machines operating at the same time took much less time to clear the same area that a single machine, with little or no impact on overall perceived noise, the Committee felt that this was an important finding for consideration of any restrictions on the simultaneous use of multiple machines.

The mulching mower was considered noisy, dusty and messy and so the Committee does not consider this a viable option for effectively removing large volumes of leaves.
Emissions Considerations

Background
Concerns have been raised about leaf blower emissions. These include particulate matter (PM) or dust raised in plumes by gasoline and electric blowers; and for gasoline blowers, all of the emissions associated with the burning of gasoline, including fine PM, carbon dioxide (CO2) and volatile organic compounds (VOCs). The Committee looked at the data regarding these emissions and also considered the health concerns that go with these emissions, which is discussed in the next section.

For its examination of emissions, the Committee relied upon data from the US Environmental Protection Agency (EPA), Massachusetts Department of Environmental Protection (MassDEP) and a report by Banks and McConnell which determines emission levels for all lawn and garden equipment, including leaf blowers.

Carbon Dioxide
As regards the greenhouse gas, CO$_2$, the data show that all lawn and garden equipment in the US are responsible for at most 0.3% of all US CO$_2$ emissions. The Banks and McConnell report concluded “Because of the relatively small contribution of GLGE CO2 to All Emissions (0.3%), it is not further considered in this report”. From data in the report, the Committee noted that all US leaf blowers account for an estimated 0.03% of all US CO$_2$ emissions (see Appendix 4). The Committee considers the amount of CO$_2$ emitted from leaf blowers to be minimal, and in and of itself, does not compel further leaf blower regulation.

VOCs
MassDEP monitors emissions of VOCs in Massachusetts and regularly publishes data on sources of these pollutants. Using this data, the Committee determined that lawn and garden equipment accounted for 1.0% of VOCs emitted in MA (see Appendix 5). Again, leaf blowers would be responsible for only 0.1% of VOCs emitted in MA.

Dust - Particulate Matter
MassDEP monitors particulate matter (dust) that is 2.5 microns or less in size (PM2.5), (PM2.5 has been associated with disease) and publishes data concerning the sources of PM2.5 on a regular basis. Using this data the Committee determined that lawn and garden equipment accounted for 0.9% of VOCs emitted in MA (see Appendix 6) and that leaf blowers are responsible for 0.09% of VOCs emitted in MA.

Dust plumes, that can be seen generated by leaf blowing, generally have particles greater than 10 microns in size (PM10) and these fall to the ground fairly quickly (see Appendix 7). The Committee considered a study by Fitz, et al, University of California, which examined leaf blowing dust plumes, and which were measured as being dissipated in the background level of dust within 5 to 10 minutes, and not traveling more than a 20-30ft from the source.

Air Quality

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4 “Particulate matter emissions factors and emissions inventory from leaf blowers in use in the San Joaquin valley” Dennis Fitz et al, University of California Riverside - www.valleyair.org/newsed/leafblowers/leafblower.pdf
For the last 15 years Brookline’s overall air quality, as measured by MassDEP to the US Environmental Protection Agency (EPA) standard, has been rated as “Good,” which is the highest rating on the EPA air quality scale ranging from “Good” to “Hazardous” (see Appendix 8).

**Emissions Considerations Summary**

The Committee concluded that leaf blowers contribute a minimal amount of emissions, as compared with all other sources of the same emission, and add no significant burden to CO\(^2\), VOC and PM2.5 emissions that are already in the environment, in significant ways, from other sources. The fact that Brookline's air overall air quality is rated “Good” by MassDEP, and has been improving for the last 15 years, confirmed to the Committee that emissions from leaf blowers were not a compelling problem requiring further leaf blower regulation.

As to dust plumes raised during operations, these are temporary in nature, dissipating in 5-10 minutes, and can be avoided by waiting, or by crossing the road, or the operator stopping temporarily. Overall air quality indicates that there are no long term compelling problems due to these plumes requiring further leaf blower regulation.

**Health Considerations**

**Background**

Concerns were raised by residents about health and the use of leaf blowers. In order to address health issues, the Committee consulted with and heard from Dr. Alan Balsam, the Director of Health, and Dr. Anthony Schlaff, Chair of the Town's Advisory Council on Public Health (ACPH).

**Health Department and ACPH Observations**

Dr. Balsam pointed out that the responsibility of the Health Department is to assess what risks are serious risks and what mitigation (if any) is reasonable. The Health Department held a public hearing in October 2015 (see Appendix 9) regarding the health issues associated with leaf blower use, and concluded that although leaf blowers do kick up particulates, and are noisy, there is no compelling public health threat from their use.

For the general population, the Health Department supports noise-based controls (for nuisance control), enforcement of the existing laws, and would support limits on the numbers of leaf blowers used simultaneously in a given area. In addition, the Department was concerned about the use of leaf blowers for debris sweeping of sidewalks and parking lots as opposed to their recommended use in clearing yards. The Health Department believes that a total ban on leaf blowers is unnecessary.

**Health Considerations Summary**

The Committee felt that given the low levels of emissions, and the opinions of the Town's Health Director and the Advisory Council on Public Health, that there is no compelling health reason to further restrict the use of leaf blowers.

**DPW Considerations**

**Background**
The DPW maintains 600 acres, close to 120 sites, and 450 miles of public roadways, and is consequently a major user of leaf blowers. While the look and appearance of a clean and tidy Town is a DPW goal, safety is a significant factor requiring the removal of leaves and debris around town.

**DPW Observations**
The DPW believes retaining the exemption from the leaf blower By-laws is necessary, and justified by their “public good” argument. The cleaning work done by the DPW is for the benefit of all town residents and the safety aspects are particularly important in clearing game fields, for example, so that residents, and children in particular, can use the Town’s outdoor areas safely. Tests have been done by the Department, comparing rakes to leaf blowers (see Appendix 10). The Department estimates that if it had to conform to the By-law without an exemption, the additional time taken to perform the cleaning tasks would cost $500,000 or more, annually.

The DPW is cognizant of its responsibility to adhere to the spirit of the By-law whenever possible, and takes complaints concerning their leaf blower operations seriously.

**Exemptions Issue**
The Town exemption from the leaf blower By-law is a concern to many residents. At least 40% of the on-line survey respondents believed the Town should not have an exemption. In discussing Article 10 of Fall Town Meeting in 2015, the Advisory Committee voted 12 in favor of retaining the exemption, 8 against.

In the on-line comments, the main reason cited for opposition to Town exemption was that an exemption was inherently unfair, that “what is sauce for the goose, is sauce for the gander.”

**DPW Considerations Summary**
The Committee agrees with the DPW that there is a “public good” argument and there should be an ongoing exemption for the Town. However, the Committee also believes the Town should continue efforts to reduce leaf blower use, and improve its “best practices.”

**By-law Enforcement**

**Background**
Enforcement of the By-law is currently the responsibility of the Police Department. Calls are given “Level 1” priority (same priority as a medical emergency). Most calls are initiated by the public, but police officers also initiate enforcement.

**Police Report Analysis 2014**
In 2014, there were 121 leaf blower related calls received by the police (See Appendix 11).

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Police Report Analysis 2015
In 2015, there were 117 leaf blower related calls received by the police (See Appendix 11).

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Police Report Analysis 2016YTD
In 2016, there are 70 leaf blower related calls received by the police (See Appendix 11).

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In 2014-2015, 21 calls were found to relate to use exempt from the By-law due to either Town operations, or contractor operations working for the Town.

Location of Calls
As the maps in Appendix 12 show, in 2015, about 60% of calls were north of Route 9. There are about ten “hot spots,” accounting for 50-60% of all calls made. The four largest “hot spots” are Beacon St-Borland St area, Brookline Ave-Village Way area, Pleasant St-Dwight St area and the Woodland Rd-Hammond St. area.

In 2015-16, police sectors 1, 8 and 9 (for Sector map see Appendix 13) accounted for over 50% of calls. In 2014-15, Police Sectors 5 and 8 had almost half the calls.

Department Observations
The Police Department informed the Committee that the Department was not opposed to a leaf blower (or contractor) registration scheme, but did not want it to be a police function. Also, the Department considered that a notion of “standing” for complaint callers be considered, such as a complaint to be reported by someone in a position to be directly adversely affected by the noise or other factors. The Department considered that targeting “hot spots,” particularly with outreach to those involved, would perhaps greatly improve the overall situation. The Department also did not think that picking a distinct day, per neighborhood, for leaf blowers to be active, would be workable in practice. The concern was voiced that a concentration of landscaper trucks in one area could cause parking and traffic problems.

Enforcement Summary
The Committee noted that over 50% of complaint calls, on average, resulted in no noise reduction, as there either was nothing to be seen or no violation. It appears that enforcement by interdiction is ineffective. The Committee felt that the Police Department was taking seriously the enforcement of the current By-laws, but that the numbers of complaints and citations seemed low compared to the volume of complaints voiced in the public hearing, correspondence, and the on-line survey. Many comments from the public voiced concern about calling or using the police to enforce the leaf blower By-law as they
felt the police have more important things to do.

All of these factors led the Committee to begin consideration of alternative enforcement processes.

**Solutions**
The Committee felt it important to survey the experience of other cities and towns as to their experiences and solutions to the leaf blower noise problem.

**Other Cities and Towns**

**Background**
The Committee found about 61 communities in the US that have enacted local ordinances to restrict leaf blower usage: 37 in California, 12 in New York State, and 3 in Massachusetts; the remaining 9 are in Illinois, Florida, Oregon, Maryland and New Jersey.

Almost all 34 communities that have enacted complete bans on leaf blowers, gasoline and electric, or just gasoline, are located in CA.

The Committee closely examined 21 communities, 12 of which were in NY, 3 in MA, 3 in CA and 2 in IL (see Appendix 12).

**Findings**
The reviewed communities limit the noise level of leaf blowers to between 65-80 dBA, with 70dBA being the most common.

Outside of CA, which does not have seasonal bans, the dates for gasoline powered leaf blower bans in 18 communities do not vary much and hours of operation restrictions vary slightly, but are generally consistent.

Four communities have restrictions as to the number of leaf blowers per lot based on square footage, and three communities register landscape service companies: Cambridge MA; Sleepy Hollow NY; and Tarrytown NY. Cambridge (pop. 100,000+) and Sleepy hollow (pop. 10,000+) have about 50 registered companies each.

In terms of exemptions, a number of communities have lists, exempt large lots, or residents. Only one, Palo Alto, does not exempt city or town operations.

In terms of enforcement, most cities and towns use the police, but an increasing number, six, that the Committee identified, are using code enforcement officers, using the police for enforcement only outside of business hours.

Enforcement in many communities is a challenge. For example, the police in Palo Alto relinquished enforcement responsibility in 2014 and only recently this year did the city appoint a code enforcement officer to address resident leaf blower noise complaints. Santa Monica CA, about the same population size as Brookline, has about 1,200 complaints annually. Both communities have a complete ban on gasoline leaf blowers.

The Committee found only one community, Burlingame CA, which allows leaf blowers to be
used one day a week (and weekends) in a given section of the city for each day of the week.

In Massachusetts, the Boston Globe reported (March 29th 2015) that “. . . control efforts have failed in other communities. Attempts to limit the blowers in Cohasset, Framingham, Marblehead, Newton, Salem, Swampscott, and Wellesley, for example, have been shot down, though Newton is reconsidering the idea.” and “A proposal for a seasonal ban was set to go before Lincoln voters at Town Meeting this spring, but a study group decided there wasn’t enough support among residents and held off.”

Other Cities and Towns Summary
As a result of this external survey, the Committee felt that further examination of the dates and times of our gasoline powered leaf blower ban should be reviewed; that exemption lists were not used by most towns and should be used judiciously; that although not frequently used, that restrictions on blowers by lot size needs further examination; and that the code enforcement officer approach needs further examination.

Solutions Considered and Rejected

Leaf Blower Ban
Leaf blower bans are almost exclusively in California where the climate, and, accordingly, the leaf drop, is vastly different from that experienced in Brookline. Also, 360 (28%) respondents to the on-line survey were in favor of a ban whereas the majority, 764 (59%) were not (see Appendix 1, Question 8).

The Committee considered a leaf blower ban and rejected this as a solution.

“One Day a Week” Operation
The Committee felt the one place that this did work, Burlingame, being in California where the climate, the seasons and tree-drop activity is completely different, was not applicable to our situation in Brookline. In addition, the input from the DPW and the police department who both considered this idea as unworkable were major considerations.

The Committee considered a “one day a week” leaf blower operation not practical.

Landscape Service Provider Registration
The Committee had a number of discussions on this idea, which was reviewed in detail with Selectman Franco, who chaired the Selectman's Noise By-law Committee. Also, two of our Committee members served on the Selectman's Noise By-law Committee. The Committee's main recommendation was to implement a registration system for landscape providers.

During the course of its meetings, the Committee compiled a list of landscape service providers observed doing business in the Town. There are well over 250 accounted for. (This list has been provided to the police department to help them in their enforcement and communication efforts.)

There were many concerns expressed by the Committee about registering this number of
providers, as the resources required to do the registration and manage the list would be significant. The Committee sought Town Council’s advice on legal aspects of registration for example, as to whether the Town could remove a company from the list, effectively barring it from working in the Town, if that company committed multiple violations. Depriving individuals or companies of their livelihood was not a topic the Committee relished exploring. There was some question as to whether this is in effect a license, which would then be subject to a licensing hearing, adding potentially a significant burden on the Selectmen to process 250+ applications each year.

In discussions with the Cambridge officials whose licensing board runs their registration system, it was unclear whether any benefits – less noise or noise complaints – accrued to the residents of that city as a result. Also, Cambridge had only 50 companies registered (which suggests that many operate without registration).

At the end of the day, the Committee did not believe that registration would in any way directly reduce noise from leaf blowers in the town. In the worst case scenario it would be a large bureaucracy costing all involved, with little to no reduction in noise.

The Committee thus rejected the idea of a Landscape Service Provider Registration System.

Approved Equipment List
The Committee considered an Approved Equipment List instead of a blanket 67 dBA limit as the Committee observed, during its tests, that some machines rated greater that 67dBA actually were, due to pitch, less annoying than ones at or below that level. One city in California has such a list whereby if the equipment is on the list, regardless of its labeled noise level sticker it is permissible to use it.

The Committee felt that to maintain the list and even getting agreement as to what machines would get on the list would be difficult to manage. The Committee observed that the one list on the CA City’s website was almost completely out of date – the machines listed were no longer available.

The Committee concluded that an Approved Equipment list is not workable.

Solutions Considered and Agreed
Property Owner Responsibility
The Committee discussed the responsibility of the landscape provider or operator who is regarded, by the community and the police, as being responsible for any violation of the By-laws.

Currently the property/home owner considers the landscape provider or contractor responsible for complying with the noise and leaf blower By-laws.

The Committee firmly believes that the property owner should also be responsible for actions of their agents or contractors regarding what happens on their property. The Committee also believes that to have the property/owner involved in ensuring that their contractor adheres to the law will greatly increase compliance and, accordingly, reduce
Increasing compliance also reduces the pressure on the enforcement agencies, which currently is the police.

Expanding the responsibility of any By-law violation to the property owner (or condominium association, etc.) on their property from the agent or contractor to the owner, involves that owner in a conversation with their agent or contractor to obey the law, since the property owner would be liable for fines that result from failure to observe the law.

The Committee believes that this should significantly increase compliance and reduce violations of the leaf blower By-laws. In addition, it lays the groundwork for another proposed change, a shift to non-police enforcement and education compliance efforts, which the Committee expects will ultimately leaf blower compliance, and noise, in the community.

The Committee proposes legislation to make the property owner liable for the violations of the leaf blower By-law by his/her agents or contractor as well as the agent or contractor themselves. The Committee proposes to have a mandatory first violation warning which will be followed by fines of $50 each for the second offense, $100 each for the third offense and $150 fines each for successive offenses, in any one calendar year.

**Civilian (i.e., non-police) Enforcement**

The Committee believes that the primary enforcement of the Leaf Blower By-law should become the responsibility of a civilian employee within DPW, not the Police.

The Committee sees the civilian enforcement specialist as a key point person in communicating with property owners and the landscape service providers. Reporting periodically as part of the Department's "dashboard" also will provide an important window on the progress on noise and complaint reduction.

The Committee, through a Town Meeting Resolution, proposes that the Town change from a Police enforcement approach to civilian responsibility for leaf blower By-law compliance, education of the By-law and best practices for property owners and landscape service providers. An example of a best practices brochure has been produced in three languages, English, Spanish and Portuguese (see Appendix 13).

**Other Changes**

There are several lesser changes that the Committee believes will reduce the impact of leaf blower noise,

These are:

- Change the Fall start and end period by two weeks, by moving the permitted use date of gas blowers from September 15th to October 1st and moving the end date of permitted use from December 15th to December 31st
- Change the weekend and holiday permitted end hour from currently 8pm, to 6pm

The change of start and end date for Fall gasoline powered leaf blower operation enables
there to be more “quiet” time for residents during (hopefully) nice outdoor weather in September. Usually, leaves have not started falling, so this is not a burden on landscapers or home owners. To extend the end date to December 31st provides for more winter cleanup time (weather permitting) which would potentially reduce the need for leaf blowing in the Spring.

Twelve out of 17 towns that have seasonal bans were using Sept 30th/Oct 1st as the end of their seasonal ban.

The Committee is proposing that the weekend and holiday times of permitted operation be set to end at 6pm rather than the current 8pm.

Mechanisms
The Committee has produced two Warrant Articles for Town Meeting to consider: a Warrant Article which proposes to consolidate all proposed changes from A8.15 to the new leaf blower By-law A8.31, and a Resolution for the Selectmen to consider shifting primary responsibility for leaf blower By-law compliance to DPW.
On Sep 15, 2019, at 17:50, edward boches <edwardboches@gmail.com> wrote:

Dear Committee Chairs:

My name is Edward Boches and I live on Crowninshield Rd. While I am not a fan of the noise that leaf blowers make, I am writing to object to the banning of all gas leaf blowers in Brookline. I feel that:

A. We have good regulations in place to limit the windows for when leaf blowers can be used.

B. The economics of battery operated blowers will make it incredibly hard for many landscapers to stay in business if they have to invest in battery powered equipment that is less cost efficient to run, requires multiple batteries to get through the day, and in fact may (?) not be that much more energy efficient when you factor in the environmental impact of manufacturing batteries. (BTW, I own a battery operated blower to do work around my house and it isn't that quiet, either.)

C. The result will be less efficient cleanups in a town that appears to value the maintenance of properties everywhere, historic districts and other.

D. We could jeopardize the livelihood of the many small, local landscapers who are part of our community, who deliver a useful service, and who create summer jobs for local kids.

E. And finally, we will increase the costs of home maintenance for many residents.

My landscaper tells me that when battery operated blowers become cost effective they will gladly make the switch. However, until then, I hope we can continue with regulations that restrict rather than ban their use.

Sincerely,

Edward Boches
75 Crowninshield Rd
Brookline, MA
978-473-6140

Edward Boches
Professor
Boston University
College of Communication
On Sep 11, 2019, at 14:25, Susan Cohen <susancohen_31@hotmail.com> wrote:

Good morning,

I am a home owner in Brookline- 27 Walnut Place.

I am writing to let you know that my husband and I are opposed to further restrictions on leaf blowers. Brookline has already set out regulations with strict limitations.

My husband and I care deeply about our environment - we take personal steps every day to reduce our carbon footprint. However, we feel that current restrictions are sufficient in this regards and further limitations will make it almost impossible to take care of our property.

There are many other ways that Brookline can take action to be more energy conscious without making it so difficult for the taxpayers.

Thank you for being open to many positions on this issue.

Susan Cohen
Dear Committee chairs,

We are Brookline residents and are writing to say that we think careful study should be done before banning all gas leaf blowers in Brookline. We understand from our landscape gardener that there would be a very negative financial impact for her, to the point of completely compromising her business. We ourselves own an electric blower and the battery is only good for an hour at most. We don’t know how the landscapers would be able to do the heavy spring and fall clean ups with these devices. We imagine that the cost of purchasing expensive commercial grade blowers would need to be passed on to homeowners like us.

One of the reasons we love Brookline is the concern and respect for the natural environment by this community. We all need to take far better care of our planet, globally and locally. However, some changes need to be phased in gradually to allow for adjustments by all concerned. I don’t know what research has been done so far by the committee, but it seems that a changeover to electric blowers should be done carefully, with all stakeholders in mind, including those who would use them. If and when the time comes that the cost and efficacy of the battery powered blowers becomes reasonable for landscape professionals and their clients, then we could support this measure.

Thank you,
Abbey Cook
50 Sumner Road
Brookline

This electronic transmission may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, please notify me immediately as use of this information is strictly prohibited.
Lisa Portscher

Subject: FW: Leaf Blowers

Begin forwarded message:

From: Michael Sandman <msandman@brooklinema.gov>
Subject: Re: Leaf Blowers
Date: September 27, 2019 at 19:27:56 EDT
To: Robin Gilula <robinstern@hotmail.com>

On Sep 26, 2019, at 08:36, Robin Gilula <robinstern@hotmail.com> wrote:

Dear Committee Chairs,

I am a Brookline resident and am writing to say that I strongly object to banning all gas leaf blowers in Brookline. I feel we have adequate regulations that define windows when these blowers can be used and I do not favor expanding to a complete ban. This will be a hardship on landscape businesses as the battery powered blowers are extremely expensive and not adequate for heavy spring and fall clean up. It will also be a burden to homeowners who will be paying exorbitant prices for leaf removal and some landscape companies will likely pull out of Brookline. If and when the time comes that the price of the battery powered blowers comes down and their power is sufficient, then I could support this measure.

Thank you,

Robin Gilula

Sent from Outlook
Hi Helen -

Thanks for your email. There are two articles related to leaf blowers—one that would prohibit the use of gasoline-powered blowers and one that would prohibit blowing leaves and debris onto public property—e.g., sidewalks and streets.

Both articles will come up for public hearings by the Advisory Committee’s Human Services subcommittee, co-chaired by Harry Bohrs and Kim Smith. The subcommittee will make a recommendation to the full Advisory Committee at a public meeting. Your comments and all others that we receive from both landscapers and residents will be circulated to all Advisory Committee members. You can be sure we will thoroughly evaluate all points of view.

The Select Board has its own parallel process.

Ultimately, Town Meeting makes a decision, and this will come up at November’s Town Meeting. Both opponents and proponents of further restrictions on leaf blowers will be able to speak at Town Meeting.

Best regards -

Mike Sandman
Lisa Portscher

Subject: FW: blower ban

On Sep 12, 2019, at 01:51, Eric Kaplan <ekaplan@k-landscape.com> wrote:

All,

I have been informed the ideal of a total leaf blower ban is coming up again. I wanted to voice my strong opposition to that total ban. I have been a landscape contractor and working in Brookline for 35 years. The partial season ban is tough enough for us to do a proper clean up job for are weekly mowing service. Not allowing us to use gas leaf blowers for spring and fall clean up would make it impossible for me to do some of my clients. We have a residential home on Hayden road that in the fall takes 8 men a full day to clean up and we do that twice in November. That’s over 120 man hours with blowers. We remove 6 to 8 large trucks of leaves. Without the use of powerful blowers I could not do that job. In the fall we are fighting the weather to try and get all the clean ups done before the first snow. If we don’t have the use of the blowers clean ups will take 2-3 times as long if not longer. We would just not be able to get to everyone client in addition to the higher cost for Brookline residents

I have looked into the battery powered leaf blowers on the market and 3 years ago invested $2000.00 in one that we scrapped after only one month because it only worked for a couple jobs each day. At this point there are many battery powered blowers on the market but nothing that has enough power and that lasts long enough for commercial use.

If this ban goes though I would have to pull out of maintenance services in the town of Brookline. I would strongly ask for you to reconsider this motion

Eric Kaplan MCLP
K&S Landscape Co.
Hi Grafton -

Thanks for your email. There are two articles related to leaf blowers—one that would prohibit the use of gasoline-powered blowers and one that would prohibit blowing leaves and debris onto public property—e.g. sidewalks and streets.

Both articles will come up for public hearings by the Advisory Committee’s Human Services subcommittee, co-chaired by Harry Bohrs and Kim Smith. The subcommittee will make a recommendation to the full Advisory Committee at a public meeting. Your comments and all others that we receive from both landscapers and residents will be circulated to all Advisory Committee members. You can be sure we will thoroughly evaluate all points of view.

The Select Board has its own parallel process.

Ultimately, Town Meeting makes a decision, and this will come up at November’s Town Meeting. Both opponents and proponents of further restrictions on leaf blowers will be able to speak at Town Meeting.

Best regards -

Mike Sandman

Mike Sandman
TMM3 & Advisory Committee chair
msandman@brooklinema.gov
+1.617.513.8908 - mobile & text

On Sep 16, 2019, at 10:03, Pease, Grafton <GPease@chestnuthillrealty.com> wrote:

Dear Committee Chairs,

I am a landscape professional who works in Brookline and am writing to say that I strongly object to banning all gas leaf blowers in Brookline. I feel we have adequate regulations that define windows when these blowers can be used and I do not favor expanding to a complete ban. This will be an additional hardship on landscape businesses that have already been affected by the current restrictions in place. It will also be a burden to homeowners who will either be paying exorbitant prices for leaf removal or choosing not to remove the leaves at all (which poses its own set of risks). This measure could be so restrictive that some landscape companies may no longer be able to service clients in Brookline.

From a risk perspective, one potential drawback to this measure that I see are increased safety hazards on public walkways due to leaf buildup; creating slip and fall potential to the general public in wet or snowy weather. Most landscape companies clean the sidewalk in front of their clients’ houses. If this measure passes there will be more leaves left on the town’s sidewalks creating the aforementioned safety risks.
I also foresee an increased strain on the drains and storm water management system. If this blower ban passes, we will see a great increase in leaves that are simply not removed (because homeowners will not be paying the higher premium to hand-rake their yards), resulting in more leaves ending up on the street, clogging storm drains and potentially causing strain on the system. This has a greater safety risk to residents in the winter when the temperatures drop below freezing and standing water is on the street due to clogged drains. Another potential side effect to standing water is the higher risk of mosquito borne diseases like EEE and West Nile Virus. It is very possible that this problem will be not mitigate in the coming years; and public sensitivity and awareness to this issue will surely be on the increase just as it has been this summer.

If this measure passes, the transition to using only battery powered blowers is cost prohibitive for landscape companies and home owners alike. The technology is not sufficient enough to make a 1:1 switch from gas to battery. So even with the option of battery powered blowers, there will still be a jump in cost to the homeowners. Battery powered blowers can be effective for small scale projects but are not adequate for heavy spring and fall clean ups. The technology of battery operated blowers is getting better and better but as of now, they are not sufficient to substitute the efficacy of gas powered blowers. I would like to reiterate that I am against this ban and am hoping that you all feel the same way.

Thank you for time in reading this,

Grafton Pease

Grafton Pease, MCLP, ISA Certified Arborist
Horticulture Manager
Chestnut Hill Realty, 300 Independence Drive, Chestnut Hill, MA. 02467
O: 617-323-2100 x120
C: 617-590-6012
gpease@chestnuthillrealty.com
www.chestnuthillrealty.com

Michael Sandman
msandman1943@gmail.com
+1/617.513.8908 mobile & text
Lisa Portscher

From: Clint Richmond <crbrookline@aol.com>
Sent: Sunday, September 22, 2019 12:48 PM
To: Harry Bohrs; ksmith1450@aol.com; Lisa Portscher
Subject: Leaf Blower articles

Dear Human Services Subcommittee:

We need to reduce our use of leaf blowers, starting with sidewalks, and eliminate gas powered blowers for the following reasons:

1) **Decarbonizing** - Moving from the combustion of fossil fuels to electric power for climate has been a theme of recent Town Meetings. WA 22 takes another needed step in this direction. Remember that the two-stroke engines found in leaf blowers are extremely polluting for their size. And to the extent that raking increases even better.

2) **Health** - this starts with combustion by-products, which is why we need WA 22. Also these Category 5 hurricane force winds blow existing particulates which consist of toxic road and tire dust, pet waste, litter, and allergens (such fungi). This are blown not just into faces of the passersby on the sidewalk, but the smallest particles can be suspended in the air for more than a week. This is why we need the sidewalk ban (WA 23). These health risks affect the landscape staff the most but also abutters. Many of us have or know people with asthma who are inevitably exposed to leaf blower products. Landscapers are very respectful of pedestrians on the public way, but stopping for a few seconds while pedestrians pass doesn't really alleviate the problem.

3) **Noise** - there is a lot of frustration among residents around compliance around the existing by-law. It's not working. I have a long list of seasonal violations, but I stopped calling. During the work week, the inspector can't get to the scene in time. The landscapers are not complying on their own despite many years of regulation in Brookline and similar laws in Cambridge and Newton. I live in Brookline Village, which does not have large yards, and have seen several professional landscapers with gas leaf blowers out this month, two weeks before the gas season begins and few leaves on the ground. Furthermore, I have often seen companies with RedMax models none of which comply with the noise limits. Citizen reporting of noise limits for gas units is impossible, while electric one are always quieter.

Finally, I serve as chair of the Green Caucus, which currently has over 100 TMM members. Since 2011, we have endorsed all restrictions on leaf blowers to date and I strongly expect the Caucus will endorse both of these by-laws.

Other jurisdictions have banned gas leaf blowers completely such as recently in Encinitas, California, which is the same size of Brookline. WA 22 will help significantly with compliance of the law with regard to the dates and noise. WA 22 also sends a message about sustainability. WA 23 protects pedestrians and will improve air quality. I urge you to vote yes on both.

Respectfully,
Clint Richmond. TMM Pct. 6
Thank you for your letter, which will become part of the public record.

Kim Smith

-----Original Message-----
From: Irene Scharf <imscharf@gmail.com>
To: lportscher <lportscher@brooklinema.gov>; ksmith1450 <ksmith1450@aol.com>
Sent: Mon, Sep 23, 2019 8:04 am
Subject: Human Services Subcommittee

Re: WAs 22 and 23

To the Subcommittee:

As I will likely be unable to make the Advisory subcommittee meeting this week, I wanted to get this out to you in advance.

I am writing to urge you to support WAs 22 and 23 as necessary adjuncts to Brookline’s commitment to a clean, safe environment.

I offer 3 main reasons why these articles deserve your support.

First, recent Town Meetings have supported minimizing our use of fossil fuels. The two-stroke engines that leafblowing machines use are significant polluters, given their small size. Their approved use in our Town is a conundrum.

Second, these gas powered machines are bad for our health in at least 2 ways. They blow dangerous particulate matter, including dirt, dust, fertilizers, animal feces, and other tiny particles up into the air as we walk/run by (It happens to me all the time on my walks/runs.). Science has proven that these tiny particles often remain aloft for many days. WA23, the sidewalk ban, addresses this issue. These machines also harm us by being too noisy. I have called in over a dozen violations this season, with questionable results. I don’t know if anyone was ever able to show up in time to warn or possibly cite a violator or homeowner. Ignoring the current laws seems to be working for those who either don’t know about our bylaws (after all these years?) or don’t care about them. Further, Non-compliant equipment that exceeds our noise limits continues to be used.

Brookline should be consistent in its support for advancing environmental concerns. It should be a leader in these efforts along with other communities, not a laggard. WA 22 will increase compliance with the law as to dates and noise levels, and WA 23 will address the issue of inhalation of dangerous particulates from these machines.

Please support these articles. Thank you for your time and consideration.

Irene Scharf
250 Russett Rd.
Lisa Portscher

Subject: FW: leaf blower letter

From: India Smith [mailto:india.smith10@gmail.com]
Sent: Monday, September 23, 2019 12:54 PM
To: Don
Subject: Re: leaf blower letter

Hi, Don,
Please feel free to forward my leaf blower letter to the subcommittee. After I talked with my landscaper, he switched to rakes and/or small electric blowers during the permitted season. But the other companies are as noisy as ever. And thanks for taking steps to correct this.
India

On Mon, Sep 23, 2019 at 9:26 AM Don <donaldwarnerarch@gmail.com> wrote:

From: India Smith [mailto:india.smith10@gmail.com]
Sent: Saturday, March 26, 2016 12:22 PM
To: donaldwarnerarch@gmail.com
Subject: leaf blower letter

Hi, Don,

I forwarded your letter about leaf blowers to my landscaper.

I encouraged him to switch to rakes when possible. I will work with him.

What about the men? Their hearing is being destroyed and they are breathing that exhaust...

The Butera company has several houses on the street. In Fall they blow the leaves past your house and mine to a chipper, then feed in leaves from five properties over a period of hours. I called the Town and described this practice, but was told it was within the regulations. There has to be a limit!

Thanks for taking the initiative,

India

This electronic transmission may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, please notify me immediately as use of this information is strictly prohibited.
On Sep 17, 2019, at 11:35, David Sonner <djsonner@gmail.com> wrote:

Dear Committee Chairs,

We are Newton residents, and we would like to add our voices to the issue of leaf blowers, and strongly object to banning all gas leaf blowers in Brookline at this time. We are certain Brookline has adequate regulations that define windows when these blowers can be used. A complete ban will be a hardship on my Brookline-based landscaper and many other landscape businesses in Brookline, as battery powered blowers are extremely expensive and not adequate for heavy spring and fall clean up. It will also be a burden to homeowners, like us, who will be paying exorbitant prices for leaf removal. Some landscape companies will likely pull out of Brookline or be forced to cease operations. This affects many homeowners, including us.

Generally we support all measures that are good for the environment, however not if it means putting small businesses out of business. Hopefully the time will come soon when the price of the battery powered blowers will make it more affordable for your local businessmen and women to purchase battery powered blowers.

Thank you.
David & Judith Sonner
140 Plymouth Road
Newton, MA 02461
Dear Committee chairs,
I am a Brookline resident and am writing to say that I strongly object to banning all gas leaf blowers in Brookline. I feel we have adequate regulations that define windows when these blowers can be used and I do not favor expanding to a complete ban. This will be a hardship on landscape businesses as the battery powered blowers are extremely expensive and not adequate for heavy spring and fall clean up. It will also be a burden to homeowners who will be paying exorbitant prices for leaf removal and some landscape companies will likely pull out of Brookline. If and when the time comes that the price of the battery powered blowers comes down and their power is sufficient, then I could support this measure.

Thank you.

Sincerely,
Susan Stebbins
84 Upland Road
Brookline, Ma 02445
Hi Kate -

Thanks for your email & good to hear from you.

There are two articles related to leaf blowers — one that would prohibit the use of gasoline-powered blowers and one that would prohibit blowing leaves and debris onto public property — e.g. sidewalks and streets.

Both articles will come up for public hearings by the Advisory Committee’s Human Services subcommittee, co-chaired by Harry Bohrs and Kim Smith. The subcommittee will make a recommendation to the full Advisory Committee at a public meeting. Your comments and all others that we receive from both landscapers and residents will be circulated to all Advisory Committee members. You can be sure we will thoroughly evaluate all points of view.

The Select Board has its own parallel process.

Ultimately, Town Meeting makes a decision, and this will come up at November’s Town Meeting. Both opponents and proponents of further restrictions on leaf blowers will be able to speak at Town Meeting.

Best regards -

Mike Sandman

Michael Sandman
Advisory Committee chair
msandman1943@gmail.com
+1/617.513.8908 mobile & text

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On Sep 10, 2019, at 15:02, Kate Taylor <kate.taylor60@gmail.com> wrote:

Dear Committee chairs,
I am a Brookline resident in the Pill Hill area and am writing to say that I strongly object to banning all gas leaf blowers in Brookline. I feel we have adequate regulations that define windows when these blowers can be used and I do not favor expanding to a complete ban. This will be a hardship on landscape businesses as the battery powered blowers are extremely expensive and not adequate for heavy spring and fall clean up. It will also be a burden to homeowners who will be paying exorbitant prices for leaf removal and some landscape companies will likely pull out of Brookline. If and when the time comes that the price of the battery powered blowers comes down and their power is sufficient, then I could support this measure.
Thank you.
Kate

--
Kate Taylor
Coaching and Consulting
617-901-0840
On Sep 16, 2019, at 13:44, Scott Vafai <sbvafai@gmail.com> wrote:

Dear Committee chairs,

I am a Brookline resident and I am writing to say that I strongly object to banning all gas leaf blowers in Brookline. I feel we have adequate regulations that define windows when these blowers can be used and I do not favor expanding to a complete ban. Based on my discussions with the landscapers we use, this will be a hardship on their businesses, as the battery powered blowers are extremely expensive and not adequate for heavy spring and fall clean up. It will also be a burden to us as homeowners, as we will be paying exorbitant prices for leaf removal and some landscape companies will likely pull out of Brookline. If and when the time comes that the price of the battery powered blowers comes down and their power is sufficient, then I could support this measure.

Thank you for your time and consideration.

Sincerely,
Scott Vafai
242 Woodland Road
Brookline, MA 02467
On Sep 18, 2019, at 12:52, george vasios <georgevasios@comcast.net> wrote:

Dear Committee chairs,

I am a Brookline resident and am writing to say that I strongly object to banning all gas leaf blowers in Brookline. I feel we have adequate regulations that define windows when these blowers can be used and I do not favor expanding to a complete ban. This will be a hardship on landscape businesses as the battery powered blowers are extremely expensive and not adequate for heavy spring and fall clean up. It will also be a burden to homeowners who will be paying exorbitant prices for leaf removal and some landscape companies will likely pull out of Brookline. If and when the time comes that the price of the battery powered blowers comes down and their power is sufficient, then I could support this measure.

Thank you.

Sincerely,
George Vasios
195 Winthrop Road, Unit
>> As a preliminary matter, I note that in instances where the words “inhabitant” or “citizen” is replaced with the word “resident,” this change is not considered to be substantive, because these words have the same primary meaning. (See, Merriam-Webster’s definition of “inhabitant” as “one that occupies a particular place regularly, routinely, or for a period of time;” and of “citizen” as “an inhabitant of a city or town”).<<

But the Merriam-Webster’s definition of “citizen” more fully includes this: “… one entitled to the rights and privileges of a freeman; a member of a state; and a native or naturalized person who owes allegiance to a government …,” hence my proposed changes.

>> However, replacement of the words “inhabitant” or “citizen” with “the public” is, in many cases, considered to be a substantive change, because as modified, the class of interested or affected individuals in the affected by-law is significantly enlarged.<<

Which is, in fact, my intent, more fully explained below.

>> See, for example, Article 3.12, which as modified would require the Planning Director to amend the Comprehensive Plan in a manner that focuses on the health, safety and welfare of the public instead of Town residents, …<<

From the Town website: “The Brookline Comprehensive Plan (PDF) serves as the road map for the town’s future. It serves as a guiding tool for actions of the town as well as the town’s official comprehensive, or master, plan under Massachusetts General Laws chapter 41, section 81D.” A quick check of section 81D: zero references to “resident,” while the term “public” appears 28 times.

We have a stated goal of increasing racial and economic diversity in Brookline. A focus on “residents” won’t do that. I’ll add that the term “resident” ignores those who own or may seek to own businesses here, who work here, or are just passing through.

>> …and would require the Director to “facilitate and maximize meaningful input” from the public rather than from Town residents, civic associations and neighborhoods;<<

Quoting from section 81D: “Each community shall conduct an interactive public process, …” [emphasis added]

>> Article 7.9, which would require the DPW Commissioner to extend notification of a snow parking ban to the public rather than to Town residents, etc.<<

The current bylaw doesn’t read “Town residents, etc.” It reads, “Reasonable action shall also be taken to notify and warn the inhabitants of the town.” I contend that reasonable actions should be taken to warn people who work here, etc., aka, “the public.”
This may or may not be the petitioner’s desired intent. <<

Yes, that is exactly my intent!

Next, you have requested an opinion regarding the use of the phrase “to the extent practicable” in WA 34. The use of this phrase may invite conflict, because it could permit “stacking the precincts.” <<

I included that as a placeholder in the Warrant Article, as currently, there is no appointed TMM2 on the Advisory Committee, no doubt because the Moderator can’t find a qualified member willing to serve. I understand the implications.

Moreover, replacing the word “member” with “resident” in Articles 2.3, 3.5, 3.6, 3.9, 3.23, 5.6, 6.8 appears to narrow the field of eligible candidates for the affected Town bodies; … <<

2.3 (CTOS) – My proposal is to narrow eligibility to residents, yes. There currently is no restriction at all on who can be a member.

3.5 (Audit Committee) - same

3.6 – (Board of Appeals) – same

3.9 – (Commission for Women – same

3.23 – (Commission on Disabilities) – same

5.6 – (Preservation Commission) – same

6.8 – (Naming Committee) – same

I content that all of these committees’ members should be Brookline residents.

… and replacement of the word “resident” with “member” in Article 3.2 purports to change the eligibility criteria for membership on the School Committee. <<

The change in Article 3.2 is intended only to track the language that defines eligibility for Select Board members, the Town Clerk, and Moderator. Despite the proposed change in Article 3.2, School Committee candidates, as now, would need to be registered Brookline voters.

Regards, Neil

Neil R. Gordon, President
N.R. Gordon & Company, Inc.
87 Ivy Street, Brookline, MA 02446
(508) 265-1362
www.liquiditymatters.com
Hello Janet: Your email below seeks an opinion, first, regarding the impact of the petitioner’s replacement of the words “citizen,” “voters,” “residents,” and “inhabitants” with the word “public” in WA 33.

As a preliminary matter, I note that in instances where the words “inhabitant” or “citizen” is replaced with the word “resident,” this change is not considered to be substantive, because these words have the same primary meaning. (See, Merriam-Webster’s definition of “inhabitant” as “one that occupies a particular place regularly, routinely, or for a period of time;” and of “citizen” as “an inhabitant of a city or town”). However, replacement of the words “inhabitant” or “citizen” with “the public” is, in many cases, considered to be a substantive change, because as modified, the class of interested or affected individuals in the affected by-law is significantly enlarged. See, for example, Article 3.12, which as modified would require the Planning Director to amend the Comprehensive Plan in a manner that focuses on the health, safety and welfare of the public instead of Town residents, and would require the Director to “facilitate and maximize meaningful input” from the public rather than from Town residents, civic associations and neighborhoods; Article 7.9, which would require the DPW Commissioner to extend notification of a snow parking ban to the public rather than to Town residents, etc. This may or may not be the petitioner’s desired intent.

Next, you have requested an opinion regarding the use of the phrase “to the extent practicable” in WA 34. The use of this phrase may invite conflict, because it could permit “stacking the precincts.” There may be language that distributes representation more equitably. Moreover, replacing the word “member” with “resident” in Articles 2.3, 3.5, 3.6, 3.9, 3.23, 5.6, 6.8 appears to narrow the field of eligible candidates for the affected Town bodies; and replacement of the word “resident” with “member” in Article 3.2 purports to change the eligibility criteria for membership on the School Committee. Again, it is unclear whether this was intended.

Please let me know if you need anything further regarding this matter. Regards, Joslin
formal definition "public" should be included and whether use of the term is so broad as to provide standing (specific mention was made of sections 4.8 and 8.31 though 8.15.7 is similar), your analysis of the entire article is requested.

As to WA 34, the AC recognizes that the change to Article 2.2, Section 2.2.1 is substantive but it is included to bring the by-law into conformity with the AC's current membership. AC would like your opinion specifically as to the phrase "to the extent practicable," but also seeks your analysis of the entire WA. You should also note that the first line of the proposed change was amended at the subcommittee's public hearing as shown below (changes to the warrant in italics).

“The Moderator shall, in June of each year, appoint residents to serve as members of the Advisory Committee...”

Please let me know if you need further clarification. Thanks for your help.

Janet