

## Warrant Article 27 – Gasoline Powered Leaf Blower Restrictions

**Recommendation:** The Ad hoc Subcommittee recommends Favorable Action on WA27, as amended to include a gas-powered leaf blower ban commencing in March of 2027, by a vote of 3-0-0. The Subcommittee also unanimously recommends adding a full-time position to the DPW for code enforcement.

<p><b>Executive Summary:</b></p>	<p>WA 27 seeks to amend Article 8.31 of the General By-Laws which regulates the operation of leaf blowers in the Town. Its short-term goal is to improve compliance with existing leaf blower regulations; its long-term goal is to phase out gas-powered leaf blowers (GBLs) in Brookline. The by-law seeks to ban the use of GBLs on properties with less than one acre of open space (as defined by the Town’s zoning by-law) effective March 15, 2024. It maintains the current exemption of the Town from the provisions of Article 8.31. The proposed by-law adds definitions, requires annual registration with DPW for all commercial operators, and raises the fines and shifts the responsibility of paying the fines from the property owner to the commercial landscaper until and unless the violation remains unpaid for 90 days.</p> <p>The Subcommittee was concerned about the 2-year time frame for compliance because more efficient, longer-lasting battery-operated leaf blowers are still in development, and it is not clear when commercially-viable electric leaf blowers will be available to the industry. Therefore, mandatory replacement of gas-powered by electric blowers before replacements are readily available at reasonable cost could put a financial burden on both landscapers and residents. The Subcommittee recommends changing the effective date from March 15, 2024 to March 15, 2027. Additional DPW staffing would be necessary to ensure compliance with the leaf blower regulations and the Subcommittee recommends adding a full-time position for code enforcement to DPW.</p>
<p><b>Voting Yes will...</b></p>	<ul style="list-style-type: none"> <li>(a) Add Walk Behind equipment to the definition of leaf blowers;</li> <li>(b) Add a definition for “Commercial Operator” that would include any individual or entity who does landscaping;</li> <li>(c) Eliminate the exemption of nonresidential property owners with more than 5 acres of land;</li> <li>(d) Make explicit in the by-law that commercial operators must register annually with DPW prior to operating leaf blowers in Brookline, and that list must be made publicly available;</li> <li>(e) Specify that contractors must train all employees on the provisions of the by-law;</li> <li>(f) Ban the operation of gas-powered leaf blowers on properties with less than one acre of open space effective March 15, 2027;</li> <li>(g) Amend the fines to apply only to the Commercial Landscaper; any fines unpaid for 90 days fall to the property owner for payment;</li> <li>(h) Make all violations and penalties cumulative regardless of location and rolled over from year to year.</li> </ul>

	(i) Increase the fines for second and subsequent offenses. (j) Maintain an exemption for Town departments.
<b>Voting No will...</b>	Keep the current by-law in place.
<b>Financial impact</b> [if any]	The current by-law is complaint-driven with the DPW largely responsible for responding to complaints, with help from the BPD on weekends and outside working hours. The DPW cannot keep up and respond to potential violation calls, as their staff are doing other full-time jobs. If the Town is required to improve violation response time, then we would need to add one full-time employee for code enforcement for this article and the recently passed warrant article on vegetative sidewalk obstructions. The petitioners estimate the cost + benefits to be about \$80,000, which would come from the General Fund, primarily property taxes.
<b>Legal implications</b> [if any]	Unclear if there are legal implications

### Introduction

The regulation of leaf blowers in the Town has been studied, debated and laws enacted since 2008, when it was incorporated into the Town’s Noise Control By-Law 8.15. In 2016 TM approved major changes in the leaf blower control by-law which among other changes, allowed for a violation to be assessed not only on the perpetrator, but the property owner as well. Also, TM passed a resolution to enable the DPW to investigate and enforce any leaf blower violation.

The petitioners have four objectives: (1) reduce the noise of leaf blowers, (2) reduce carbon production to improve the environment; (3) reduce toxic exhaust of gas-powered devices, and, (4) improve compliance with leaf blower by-laws.

### Evaluation Methodology/Research

- <https://www.brooklinema.gov/DocumentCenter/View/25283/Brookline-Town-By-Laws>  
Article 8.31 Leaf Blower Control current bylaw.
- <https://www.brooklinema.gov/DocumentCenter/View/10374/MCLB---Final-Report-Oct-2016?bidId=>  
Final Report Moderator’s Committee on Leaf Blowers
- <https://www.brooklinema.gov/DocumentCenter/View/10375/Appendices-Final-Oct-2016?bidId=>  
Appendices to the Moderator’s Committee on Leaf Blowers
- <https://www.brooklinema.gov/DocumentCenter/View/10376/Additional-Information---MCLB-Oct-2016?bidId=>  
Additional Information: Moderator’s Committee on Leaf Blowers
- <https://www.brooklinema.gov/DocumentCenter/View/21301/Leaf-Blower-Regulations-Final-021520>  
Town of Brookline Leaf Blower Regulations
- GIS map prepared by the IT Department identifying properties that are 1 acre of open space, subtracting building footprints.

- April 9, 2022 Memo from Commissioner of Public Works, Erin Chute Gallentine, Kevin Johnson (Highway and Sanitation Director) and Alexandra Vecchio (Director of Parks & Open Space)

- <https://www.latimes.com/california/story/2021-12-09/california-regulators-phaseout-new-gas-powered-lawnmowers-and-leaf-blowers>

Regulations by the California Air Resources Board will ban the sale of new gas-powered leaf blowers and lawn mowers starting in 2024 and portable generators by 2028. The ban, signed into law by Governor Newsome, is based on a belief that battery technology will improve and become more widely available before the effective date – but will do an annual review to determine whether that date is on target or needs to be delayed. It does not ban existing gas-powered equipment, which can continue to be used. The state has set aside \$30M to help professional landscapers transition from gas-powered to zero-emission equipment.

- <https://californialocal.com/localnews/santa-cruz/ca/article/show/1612/1612-leaf-blower-ban-explained/>

- [https://www.lexingtonma.gov/sites/g/files/vyhlf7101/f/uploads/motion\\_art\\_10\\_noise\\_landscape\\_revised\\_11.18.21\\_11.03pm\\_final.pdf](https://www.lexingtonma.gov/sites/g/files/vyhlf7101/f/uploads/motion_art_10_noise_landscape_revised_11.18.21_11.03pm_final.pdf)

Lexington TM in November 2021 approved a gas-powered leaf blower ban by a vote of 85%. A citizen petition put the ban on the March 2022 ballot and it passed by a vote of 55%. Its effective date is 2025 for landscapers; 2026 for residents.

- <https://www.landscapeprofessionals.org/images/NALPFTP/NALP/advocacy/documents/leafblowers%20position%20paper.pdf>

National Association of Landscape Professionals position paper opposes “across-the-board” bans of gas-powered leaf blowers,.

## **Discussion**

The Ad Hoc Subcommittee of the Advisory Committee held a public hearing on Zoom on WA 27 – To amend Section 8.31 of the Town’s General By-Laws on April 12<sup>th</sup> at 5:00 pm. Attending were the Petitioners Donald Warner, Virginia Smith (TMM P4), Clint Richmond (TMM P 6) and Maura Toomey (TMM P8); DPW staff Erin Chute Gallentine (Commissioner, Brookline DPW), Kevin Johnson (Director, Highway and Sanitation), Alexandra Vecchio (Director, Parks & Open Space); Landscapers Faith Michaels (TMM P5), Steven Gold, John Garrant, Stephen McLaughlin; and landscape workers Gustavo, Mr. and Mrs. Frank Brilotta, Lorena Marcal, and Catherine Hanss; Residents Michael Segal, Britt Lee, Phoebe Ramler, George Vasios, Carlos Ridruejo (TMM P14, AC), Julian Fisher, Jenny Lewis and Benedicte Hallowell (TMM P15); Subcommittee members Janice S. Kahn (TMM P15, Co-Chair), John Doggett (TMM P13), Stephen Reeders and Georgia Johnson.

Meeting Recording:

<https://brooklinema.zoomgov.com/rec/share/YQRODD3HLWmsSPS8pDdREzNT-NoRrAzvWMs62S3HB4eISkStQaMnYKjzXB7PJmN.n9nQy06BuexHrEOC> Passcode: ^20PnuXm

The Ad Hoc Subcommittee held a second meeting on Zoom on April 26<sup>th</sup> at 3:30 pm to discuss the proposed changes to Section 8.31. Attending were Petitioners Donald Warner and Clint Richmond (TMM P 6); DPW Commissioner Erin Chute Gallentine, Kevin Johnson (Director, Highway and Sanitation) and Alexandra Vecchio (Director, Parks & Open Space); SB member John VanScoyoc; and Subcommittee members Janice S. Kahn (TMM P15, Co-Chair), John Doggett (TMM P 13) and Stephen Reeder.

Meeting Recording:

[https://brooklinema.zoomgov.com/rec/share/nA6gASia-8z38MJ-xJtRhyGnOuL0H6FB0sdnkZp\\_tRY4KsXW05U3DjwvxoilfPEy.Ltc7t4VRGQkVvZK4](https://brooklinema.zoomgov.com/rec/share/nA6gASia-8z38MJ-xJtRhyGnOuL0H6FB0sdnkZp_tRY4KsXW05U3DjwvxoilfPEy.Ltc7t4VRGQkVvZK4)

Passcode: LT@2^Be

At the public hearing, the Subcommittee heard from the petitioners of WA27, landscaper company owners who work in the Town, landscape workers, as well as from residents. In all the testimony there were at least 16 members of the public who spoke, most of whom were against the ban; only one was in favor of the warrant article as written.

**The Petitioners:** The Petitioners explained the changes to Article 8.31 of the Town's By-laws that are being proposed under WA27 and noted that the goals of the amendments are two-fold: (1) to improve compliance by landscape companies with the current by-law, and (2) to respond to the urgency of climate change mitigation by requiring electric leaf blowers be used exclusively, starting on March 15, 2024. The proponents of the by-law note that electric leaf blowers have greatly improved since the current leaf blower by-law was amended in 2016 and that electric leaf blowers are somewhat quieter than gas-powered ones.

**The Landscapers:** The Subcommittee heard from a number of landscapers who expressed a number of concerns: (1) that the industry has hit a plateau when it comes to batteries and that the technology is still 8 – 10 years away from being able to completely substitute electric leaf blowers; (2) the batteries don't last long enough on each charge, particularly at the highest levels (15 minutes) and are expensive to replace; (3) electric leaf blowers are not yet good enough for leaves, and particularly wet leaves in the Fall cleanup; (4) lithium batteries are flammable and burn very hot; (5) a complete ban of gas-powered blowers would significantly reduce their income; (6) they urged education over fines to get higher compliance.

**The Residents:** The Subcommittee received a letter and testimony from a Crafts Road resident who purchased a gas-powered leaf blower a few years ago, who argued that it didn't make sense to prohibit a homeowner from using a leaf blower that complies with the current, from continuing to use that leaf blower while still operable. Another resident who served on the 2016 Moderator's Committee on Leaf Blowers, expressed concerns about the focus on leaf blowers, which she noted is a tool, when there is other noise-producing equipment (such as AC units and snow blowers) which are not regulated. One resident in favor of WA27 was hopeful that the equipment will become more available, and who described an incident in violation of the current by-law, supporting the need for greater compliance.

Both landscapers and residents who hire landscapers spoke against the amendments proposed in WA27. Residents were concerned that they would lose their landscaping service (who may also do snowplowing in the winter) who would just find work elsewhere.

The Subcommittee discussed the amendments to the by-law and had considerable reservations about the impacts of passing it with the current language. It was agreed that there is a need for better compliance with the current by-law, which comes down to a need for better enforcement.

The petitioners also recognize the need for a dedicated person for enforcement within the Department of Public Works. DPW Commissioner Gallentine, pointed out that a full-time employee would be needed for this type of code enforcement because experience has shown that violations often happen after hours and on weekends and the person would need to flex their hours to try to have some coverage outside of normal work hours. Additionally, the Town has been receiving more requests for enforcing sidewalk obstructions, trash, accessibility etc. and feels that there is more than enough work for a full-time person to educate, manage and enforce these types of town by-laws.

The Ad Hoc Subcommittee did not come to any conclusions about WA27 on the 12<sup>th</sup> and so, by unanimous consent, at that time had no recommendation to the Advisory Committee, but in listening to the concerns about lack of enforcement of the current by-law, by a unanimous vote of 4 in favor, voted to recommend that a new staff position of code enforcer be added to DPW.

On April 26<sup>th</sup> 2022 the Subcommittee met with the petitioners again on Zoom to have a more thorough discussion of the proposed changes to the section 8.31.

In the interim, the petitioners made changes in response to subcommittee member comments heard at the first meeting. The article now retains the language of the current bylaw in 8.31.3 (a) to maintain the exemption of nonresidential property owners over 5 acres, (c) 7,500 sq. ft. for the simultaneous operation of two gas-powered leaf blowers and (d) and keeps the current 67 dBA noise level. The petitioners also restored the language regarding the Town's exemption. The petitioners also submitted a document addressing issues raised by those opposed to the warrant article. They noted among other issues: (1) that the Stihl BGA 200 battery-powered leaf blower compares well to the Stihl BR 500 (65 dB) gas-powered leaf blower; (2) in their view the amendments would not add complexity to the existing regulations; (3) compliance with the current regulations is not working, with only 21 landscapers out of a reported 100+ having registered with DPW so far this year.

Enforcement of the current partial ban is deemed “a failure” by the petitioners and therefore believes a complete gas-powered blower ban is required to solve the violation of the partial ban. One Subcommittee member noted the experience of Santa Monica CA, which has a population about 30% larger than Brookline, and has had a complete ban in effect since the 1990's. In 2017, the local newspaper noted **“More Than 3,500 Violations of Santa Monica Leaf Blower Ban Reported in Three Years”**. To put this in context, in Brookline, we average around 100-140 reported violations per year. The member expressed concern that a full ban would lead to a significant increase in potential violations that would exceed the capacity of a single staff position at the DPW. One of the petitioners reached out to the Santa Monica code enforcement

division to find out more information about their leaf blower ban. The petitioner learned that the city has a well-staffed code enforcement division within their Planning Department, and a simple way of filing complaints either on-line or by phone. The petitioner asked about increased violations since the ban went into effect and learned that the numbers had decreased, not increased.

The Subcommittee looked again at the Definitions section and agreed with Commissioner Gallentine that the addition of “leaf blowers on wheels” was helpful clarifying language. The new definition of “Commercial Operator” was felt to be understandable and no longer a concern. The petitioners were no longer recommending changes to the wording in 8.31.3 (a), (c) and (d), responding to the Subcommittee’s concerns. Commissioner Gallentine also felt that new language in which a warning followed by fines would accrue and not reset at the end of the year would be helpful for enforcement.

The new sections 8.31.3 (e), (f) and (g) already exist in the Town’s regulations for landscapers doing business in Brookline, and these additions codify them in the by-law section 8.31. The Subcommittee discussed these changes with Commissioner Gallentine who noted that last year about 51 landscapers registered. The DPW has a mailing list of about 150 landscapers and hopes to grow that database. There is a \$25 fee for registering and landscapers can mail in the form which must be signed and states that they understand the regulations, they have trained their staff on the regulations and that their staff must use equipment with a manufacturer’s sticker showing the equipment is compliant. There was a discussion about the need to do more outreach to residents as well as landscapers. Leaf blower bylaw and regulations:

<https://www.brooklinema.gov/954/Leaf-Blower-Information>

The single point that remained unresolved was the petitioners new 8.31.3 (h) which sets March 15, 2024 as the effective date, and which the Subcommittee felt should be changed to March 15, 2027 to allow for technology improvements in battery-operated leaf blowers, which would lead to more efficient, lower cost equipment.

The Subcommittee learned that the Town is making progress with transitioning to electric leaf blowers. Alexandra Vecchio told the Subcommittee that there are currently 47 pieces of equipment that are battery-operated, of which leaf blowers represent 23 pieces. There are 44 pieces of gas-powered equipment, including 1 ride-on blower, 5 push blowers and 38 backpack blowers (of which 34 are below 67 dBA). There are only 4 red max gas blowers, which can generate noise up to 103 dB still in use – down from an original 35.

One of the concerns of the Subcommittee is cost. Electric leaf blowers cost about \$400, which is a little cheaper than a gas leaf blower which costs about \$500. However, each battery costs \$1500, which adds considerable cost. The experience of the DPW is that the batteries last 1 to 2 years at most. DPW uses commercial electric handheld leaf blowers with a back-up battery and can do many functions not needing the higher power. In the case of electric backpack leaf blowers, the full blower weight is held by the operator’s arm, compared to gas-powered backpack leaf blowers where the operator just guides the tube, making it less burdensome for the landscape worker. The hope is that since technology in electric leaf blowers has improved over the past five years, it will continue to improve and become less expensive in the next five years,

which is why the Subcommittee is recommending an effective date of March 15, 2027. Another variable that the Subcommittee considered was the life-cycle of the equipment for both landscapers and residents who may have purchased gas-powered leaf blowers. Should this warrant article pass, anyone with newly-purchased equipment would in any case need to replace it within 5 years. Extending the effective date from 2024 to 2027 would give those who work and/or live in the Town sufficient notice to prepare for the ban.

The petitioners pointed out that other communities have earlier effective dates, including Washington DC, which has a ban that went into effect 1/1/2022, and that there already exists sufficient alternatives. This remained an unresolved point and the Subcommittee is recommending changing the effective date from March 15, 2024 to March 15, 2027. The rest of the language in that section, which exempts properties with one acre of open space or more, was discussed but not changed.

### **Recommendation**

The Ad Hoc Subcommittee, at the first meeting, by a vote of 4 in favor, 0 opposed and 0 abstentions, recommended the addition of a full-time inspector/code enforcement position in the Highway and Sanitation Division of DPW. That recommendation remains.

The Ad Hoc Subcommittee at the second meeting by a vote of 3 in favor, 0 opposed and 0 abstentions recommends favorable action on the warrant article as amended:

(h.) Commencing March 15, ~~2024~~ 2027, no gas-powered Leaf Blowers shall be used on any properties with less than one acre of open space (as defined in the Town's zoning by-law), except the Town may operate gas-powered Leaf Blowers at any time for life-safety uses, such as clearing sidewalks, streets and school grounds.

### **APPENDIX:**

**WA27:** The list of all changes to Section 8.31 that were proposed in the original warrant article.

- 8.31.2 (a) Added Leaf Blowers on wheels – which the Subcommittee was felt unnecessary since the definition is for “any portable powered machine...”
- 8.31.2(e): New definition “Commercial Operator” refers to any “individual or entity” providing a landscaping service for a fee. The language is similar to the recently-passed Lexington by-law, but members of the Subcommittee felt that it could be interpreted for a high school student who is paid to do such service.
- 8.31.3(a) Removes the reference to the exemption of nonresidential properties containing at least 5 acres of open space. Subcommittee members were not sure of the purpose of removing that language.

- 8.31.3(c) changes 7,500 to 20,000 square feet for properties allowing no more than 2 gas-powered leaf blowers to be used on the property simultaneously. This change raised a number of concerns. (1) it would only apply to properties in South Brookline, since DPW is exempt from the by-law; (2) it would mean leaf blowers in operation for a much longer period of time to clear the larger square footage, creating more of a noise concern; (3) in tests done by the Moderator's Committee, it is not noticeably noisier when multiple leaf blowers are operating simultaneously.
- 8.31.3(d) changes the dBA level of leaf blowers from 67 dBA to 65 dBA. According to a member of the Moderator's Committee, that change is not noticeable and unnecessary. Lexington, MA has a 78 dBA at 50 feet limit.
- 8.31.3(e) is a new section stating that a "commercial operator" must be permitted annually to operate in Brookline. Landscapers right now register with the Town; this formalizes it within the by-law.
- 8.31.3(f) is a new section stating that the DPW shall make available a list of permitted "commercial operators" to all property owners or managers.
- 8.31.3(g) is a new section requiring "commercial operators" to train all employees on the by-law and give them a copy.
- 8.31.3(h) is a new section banning gas-powered leaf blowers on all properties with less than 1 acre of **open space** in contrast to 1-acre lots as of March 15, 2024.
- 8.31.5 Maintains the Town's exemption with new language.
- 8.31.8(a) is a new section requiring permits from all Commercial Operators doing business in Brookline and assesses penalties for those who do not.
- 8.31.8(b) is amended to state that the Commercial Operator will be assessed fines for all violations. The fines have been increased from \$50 to \$200 for a second offense and from \$100 to \$300 for a third offense. A fourth offense will result in suspension of a permit, which is in the current by-law. Further, the Article states that penalties accrue by Operator and not by location and the penalties will roll over from year to year. Importantly, if the fines remain unpaid for 90-days they will be assessed against the property owner. \$300 is the highest fine the Town can impose. Lexington's by-law has a maximum of \$200.