

Final Report of the Selectmen's Noise Bylaw Committee
June 24, 2015

Executive Summary

The Selectmen's Noise Bylaw Committee was established by the Board of Selectmen in October, 2014 in response to community desire to review Article 8.15 and 8.31. The Selectmen charged the committee with:

- Examining enforcement of the two articles
- Determining whether the articles are inconsistent with each other
- Making recommendations to improve enforcement and the clarity of the articles

In carrying out its charge, the Selectmen's Noise Bylaw Committee recognizes the importance of the current rules governing the generation of noise in the Town of Brookline. The committee offers twelve recommendations that, if implemented, will improve the clarity and effectiveness of the existing Brookline bylaws governing generation of noise. The committee's recommendations can be divided into two types – those immediately implementable and those that require additional public process.

The committee's recommendations that are immediately implementable are as follows:

1. *Implement a registration system for all landscape contractors operating in Brookline.*
2. *Improve public education about the existing restrictions on the use of leaf blowers and other lawn care equipment by residents and contractors.*
3. *Edit Article 8.31 of the Bylaws to improve its readability, to clarify whom and what it applies to, and to include a reference to Article 8.15 of the Bylaws.*
4. *Edit Article 8.15.6(f) of the Bylaws to include a reference to Article 8.31.*
5. *Encourage the police department to maintain its policy of proactive enforcement of Articles 8.15 and 8.31 of the Town's Bylaws.*
6. *Encourage the police department to feel empowered to issue citations for violations of Articles 8.15 and 8.31 of the Town's Bylaws when it is appropriate. The objective of enforcement should be to control noise and the department, and its officers, should feel comfortable using both warnings and citations to achieve this goal.*
7. *Encourage the Department of Public Works to continue purchasing replacement equipment that complies with the decibel levels set out in Article 8.15.*
8. *Encourage the Parks and Open Space Division of the Department of Public Works to develop a formal policy that identifies ways to minimize the use of leaf blowers, when it is practical.*

The committee's recommendations that require additional public process and, possibly, the formation of a successor committee(s) are as follows:

1. *The committee recommends that Article 8.15 of the Bylaws be reviewed and, possibly, rewritten to update its requirements and improve its clarity.*
2. *The committee recommends that a public process be undertaken to consider whether the restrictions that currently apply to gasoline powered leaf blowers in Article 8.31 of the Bylaws should be extended to leaf blowers powered by other means.*
3. *The committee recommends that the word "portable" be explicitly defined in Articles 8.15 and 8.31 of the Bylaws.*
4. *The committee recommends that consideration be given to citing both the contractor and homeowner when a landscape contractor violates Article 8.15 and/or 8.31 of the Bylaws.*

Introduction

The Selectmen's Noise Bylaw Committee was established by the Board of Selectmen in October, 2014. The committee was established following the filing by a citizen petitioner of two warrant articles at successive town meetings (Annual 2014 Town Meeting and November 2014 Special Town Meeting). The articles sought to amend the existing noise bylaw (Article 8.15 of the Town's Bylaws). The town meetings voted No Action on the articles indicating rejection of the changes sought. Still, the Board of Selectmen felt it appropriate to form a committee to review Article 8.15 and 8.31 because of comments received during the warrant article review processes.

The Board of Selectmen appointed eight Brookline residents to serve on the Selectmen's Noise Bylaw Committee (see Appendix 1). The committee met five times and invited affected and interested parties to its meetings to help the committee carry out its charge and to provide personal and expert testimony.

The Noise Bylaw Committee charge adopted by the Selectmen was:

1. Reviewing the enforcement provisions and procedures of the existing By-Law to ensure effective and efficient regulation of excessive noise;
2. Considering whether inconsistencies exist in the town's general by-law between the noise by-law – Section 8.15 – and the leaf blower by-law – Section 8.31;
3. Recommending to the Board of Selectmen in the form of a warrant article or policy changes, if appropriate:
 1. Changes to the noise by-law enforcement provisions and procedures
 2. Remedies to inconsistencies that may exist between Sections 8.15 and 8.31 of the general by-laws.

To the extent any of the recommendations or issues discussed in this report goes beyond the Selectmen's charge, it is the result of comments received from the public and impacted parties during the committee's meetings.

Summary of Meetings

The Committee held five meetings to conduct its work and fulfill its charge. A summary of the meetings and the conversation follows. For a more complete record of individual meetings please refer to the committee's meeting minutes (<http://brooklinema.gov/1221/Noise-Bylaw-Committee>).

- March 19, 2015: Organizational meeting that included discussion of the Selectmen's charge to the committee, how the committee planned to approach its work, and the committee's schedule.
- April 16, 2015: Meeting with Police Chief Dan O'Leary to learn about the Police Department's experience with noise issues in Town, including Articles 8.15 and 8.31 of the Bylaws, and the department's approach to enforcement.
- April 29, 2015: Meeting with Town Counsel Joslin Murphy to discuss Articles 8.15 and 8.31 and Counsel's interactions with the Articles. Specific attention was paid to the question of whether Articles 8.15 and 8.31 are in conflict with each other, as was suggested during the warrant review processes that took place after the two Warrant Articles were filed.
- May 18, 2015: Meeting with Commissioner of Public Works Andy Papastergion to discuss enforcement of Articles 8.15 and 8.31, testing of equipment to ensure it meets the requirements set out in Article 8.15, and the Public Works Department's interactions with the Articles. Committee members also reviewed draft committee recommendations.
- June 24, 2015: Public meeting at which the committee reviewed a draft committee report.

The minutes of the committee's meetings are posted on the Town website. To view them, visit www.brooklinema.gov, navigate to the "Boards/Commissions" section of the website, and then select "Noise Bylaw Committee."

Fact Base

After meeting five times and having conversations with Town staff, residents, and interested parties the Selectmen's Noise Bylaw Committee established the following:

- There is no apparent general dissatisfaction with the regulation of noise in Town except in the area of noise generated by lawn care equipment. This statement is made based on the lack of testimony from residents about noise generated from sources other than from lawn care equipment. Some residents believe too much noise is being generated when lawn care is performed.
- Violations of Articles 8.15 and 8.31 of the Bylaws stemming from the inappropriate use of lawn care equipment do occur, but there is no evidence to suggest one group (residents vs. contractors) offends at a greater rate than the other.

- Members of the public are confused about what Articles 8.15 and 8.31 say; what the rules governing noise are, particularly noise generated by lawn care equipment; and to whom Articles 8.15 and 8.31 apply.
- The rules that govern gasoline powered leaf blowers are not clear because (1) they are divided between two articles in the bylaws and no mention of the companion article is currently included in either of the articles, and (2) the language used to set out the rules is, at times, unclear and confusing.
- Article 8.15 is written in a confusing way and in part its content is possibly outdated.
- There is desire by some residents to see additional restrictions on the use of leaf blowers and other lawn care equipment discussed and implemented.
- There is dissatisfaction among some residents with the enforcement of Articles 8.15 and 8.31.
- Efforts to educate residents and impacted parties about the rules governing the generation of noise in the Town of Brookline are ongoing, but could be expanded.

Recommendations

The Selectmen's Noise Bylaw Committee developed two types of recommendations:

- Those that fall within the scope of the committee's charge from the Board of Selectmen and can be implemented immediately
- Those that go beyond the charge, and, therefore, require additional public process

The eight recommendations that fall within the committee's charge are concrete recommendations that can be implemented immediately or with minimal additional work. These recommendations were developed in direct response to the Selectmen's request of the committee.

The four recommendations that fall outside of the committee charge will require the Selectmen to implement additional public process, if they wish to proceed with the recommendations.

Immediately Implementable

Recommendation 1: Implement a registration system for all landscape contractors operating in Brookline.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the Town implement a registration system for all landscape contractors operating in Brookline.

The City of Cambridge, MA currently requires all private landscape contractors to register with the city before they are allowed to operate there. The committee recommends that the Town of Brookline implement a similar registration system. The committee suggests implementing a

registration system will improve the enforcement of Articles 8.15 and 8.31. Contractors would be required to:

- Pay a small registration fee
- Provide proof that their equipment complies with the Town's Bylaws (Article 8.15)
- Provide proof that their staff has been made aware of the rules governing the use of landscaping equipment in Brookline (Articles 8.15 and 8.31)
- Provide a list of properties at which their firm has been contracted to provide landscaping services

Recommendation 2: *Improve public education about the existing restrictions on the use of leaf blowers and other lawn care equipment by residents and contractors.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the Town improve public education about the existing restrictions on the use of leaf blowers and other lawn care equipment by residents and contractors.

The committee heard that residents and contractors operating in Brookline lack an awareness of the Brookline specific restrictions on noise generated by lawn care equipment. In fact, it was represented to the committee that some residents believe the noise and use restrictions found in Articles 8.15 and 8.31 of the Bylaws only apply to contractors. Separately, the committee observed that there is no single easy-to-reference document that outlines the rules. In order to address these issues the committee recommends:

- For the time being, the Town continues its current practice of mailing notices to all contractors about the existence of Articles 8.15 and 8.31 and that the mailing list be updated and expanded to capture additional contractors.
- That a pamphlet be developed that explains the rules that govern the use of leaf blowers and lawn care equipment in Brookline and that the pamphlet be printed in multiple languages (English and Spanish, at a minimum). The pamphlet should be used as an educational tool and distributed to multiple audiences throughout the year (at enforcement calls, at Brookline Day, and year round at Town Hall and in the libraries).
- The Town partner with neighborhood associations and civic groups to improve awareness of the current rules governing the generation of noise and to whom the rules apply.
- Specific to the times of the year it becomes permissible to use/not use portable leaf blowers, increased advertising should occur to make the public aware that it will soon become permissible/impermissible to use leaf blowers. Advertising could take the form of:
 - Sandwich boards at key intersections (as is done for Town elections)
 - Posting notice at the Town dump around hazardous waste disposal days
 - Placing an insert in Townwide mailings (property tax and/or motor vehicle excise tax)

- Social media posts on the Town's social media accounts (Twitter and Facebook)
- An advertisement in the TAB

Recommendation 3: *Edit Article 8.31 of the Bylaws to improve its readability, to clarify whom and what it applies to, and to include a reference to Article 8.15.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the following Bylaw amendment.

The committee believes Article 8.31 is confusing and difficult to understand in its current form. Also, the lack of reference in it to Article 8.15 which also sets out rules governing the use of leaf blowers gives readers the mistaken impression that Article 8.31 is the only article in the bylaws that addresses leaf blowers.

Underlined text is proposed for addition; struck through text is proposed to be eliminated.

Article 8.31
Gasoline Powered Leaf Blowers

Section 8.31.1: STATEMENT OF PURPOSE

Reducing the use of gasoline and oil fuels and reducing carbon emissions into the environment are public purpose of the Town and the reduction of noise and emissions of particulate matter resulting from the use of gasoline powered leaf blowers are public purposes in protecting the health, welfare and environment of the Town. Therefore, this by-law shall limit and regulate the use of gasoline powered leaf blowers as defined and set forth herein.

Section 8.31.2: USE REGULATIONS

1. Gasoline Powered Leaf Blowers.

Gasoline Powered leaf blowers are defined as any portable gasoline powered machine used to blow leaves, dirt and other debris off lawns, sidewalks, driveways, and other horizontal surfaces.

2. Limitations on Use.

a. Gasoline Powered leaf blowers ~~shall not~~ may be operated ~~except~~ between March 15 and May 15 and between September 15 and December 15 ~~in each year.~~ ~~The provisions of this subsection do not apply to the use of leaf blowers by the Town and its contractors.~~ ~~The provisions of this section also do not apply to non-residential property owners but only with respect to parcels that contain at least five acres of open space.~~ ~~The provisions of this subsection also shall not apply to the use of leaf blowers by the~~

~~Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.~~

b. The provisions of Articles 8.15 shall also apply to gasoline powered leaf blowers.

3. Regulations.

The Commissioner of Public Works with the approval of the Board of Selectmen shall have the authority to promulgate regulations to implement the provisions of this Gasoline Powered Leaf Blower By-Law.

4. Enforcement and Penalties

a. This bylaw may be enforced in accordance with Articles 10.1, 10.2 and/or 10.3 of the General By-Laws by a police officer, the Building Commissioner or his/her designee, the Commissioner of Public Works or his/her designee and/or the Director of Public Health or his/her designee.

b. For the purposes of this section "person", as referenced in Articles 10.1, 10.2 and/or 10.3, shall be defined as any individual, company, occupant, real property owner, or agent in control of real property. Each violation shall be subject to fines according to the following schedule:

- (a) a warning or \$50.00 for the first offense;
- (b) \$100.00 for the second offense;
- (c) \$200.00 for the third offense;
- (d) \$200.00 for successive violations, plus
- (e) court costs for any enforcement action.

5. Exemptions

The provisions of this subsection shall not apply to the use of leaf blowers by the Town and its contractors when said contractor is working pursuant to its contract with the Town. The provisions of this section also do not apply to commercial and industrial property owners but only with respect to parcels that contain at least five acres of open space. The provisions of this subsection also shall not apply to the use of gasoline powered leaf blowers by the Town or its designees for performing emergency operations and clean-up associated with storms, hurricanes and the like.

~~5.~~ 6. Effective Date.

The provisions of this Gasoline Powered Leaf Blower By-Law shall be effective in accordance with the provisions of G.L.c.40, s.32.

Recommendation 4: *Edit Article 8.15.6(f) of the Bylaws to include a reference to Article 8.31.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend the following Bylaw amendment.

The insertion of reference to Article 8.31 in Article 8.15 is recommended in hopes of making it clear that additional restrictions on the use of leaf blowers exist beyond those found in Article 8.15.

Underlined text is proposed for addition; struck through text is proposed to be eliminated.

(f) Leaf Blowers

No person shall operate any portable Leaf Blower(s) which does not bear an affixed manufacturer's label or a label from the town indicating the model number of the Leaf Blower(s) and designating a Noise Level not in excess of sixty-seven (67) dBA when measured from a distance of fifty feet utilizing American National Standard Institute (ANSI) methodology. Any Leaf Blower(s) which bears such a manufacturer's label or town's label shall be presumed to comply with the approved ANSI Noise Level limit under this By-law. However, any Leaf Blowers must be operated as per the operating instructions provided by the manufacturer. Any modifications to the equipment or label are prohibited. However, any portable Leaf Blower(s) that have been modified or damaged, determined visually by anyone who has enforcement authority for this By-law, may be required to have the unit tested by the town as provided for in this section, even if the unit has an affixed manufacturer's ANSI or town label. Any portable Leaf Blower(s) must comply with the labeling provisions of this By-law by January 1, 2010. However, the owner's of any Leaf Blower(s) operating after January 1, 2010 without a manufacturer's ANSI label on the equipment, may obtain a label from the town by bringing the equipment to the town's municipal vehicle service center or such other facility designated by the Town for testing. The testing will be provided by the town's designated person for a nominal fee and by appointment only. Testing will be provided only between the months of May and October. If the equipment passes, a town label will be affixed to the equipment indicating Decibel Level.

Whether the equipment passes or not, the testing fee is non-refundable. Leaf blowers may be operated only during the hours specified in Section 8.15.6(a)(1). In the event that the label has been destroyed, the Town may replace the label after verifying the specifications listed in the owner's manual that it meets the requirements of this By-law.

Gasoline powered leaf blowers are further regulated in Article 8.31.

Recommendation 5: Encourage the police department to maintain its policy of proactive enforcement of Articles 8.15 and 8.31 of the Town's Bylaws.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the police department continue to proactively enforce Articles 8.15 and 8.31 of the Town's Bylaws.

Proactive enforcement of these Articles is the current policy of the Brookline Police Department. Proactive enforcement in the eyes of the committee means that enforcement should not be solely complaint driven. Officers should anticipate where problems might occur based on past experience and should not wait to receive a complaint before undertaking enforcement activities in these areas or locations.

Recommendation 6: Encourage the police department to feel empowered to issue citations for violations of Articles 8.15 and 8.31 of the Town's Bylaws when it is appropriate. The objective of enforcement should be to control noise and the department, and its officers, should feel comfortable using both warnings and citations to achieve this goal.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the police department rely upon officer discretion when deciding how to enforce Articles 8.15 and 8.31.

Currently, there is a perception by members of the public that officers are encouraged to issue warnings for violations of Articles 8.15 and 8.31 as opposed to citations. To the extent such encouragement has been given, it should cease. While those enforcing the Articles should not be encouraged to write warnings, they should also not be encouraged to solely write citations. The committee recommends that enforcement be carried out using appropriate discretion.

Recommendation 7: Encourage the Department of Public Works to continue purchasing replacement equipment that complies with the decibel levels set out in Article 8.15.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the Department of Public Works continue to purchase equipment that complies with Article 8.15 when it is available.

Recommendation 8: Encourage the Parks and Open Space Division of the Department of Public Works to develop a formal policy that identifies ways to minimize the use of leaf blowers, when it is practical.

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that the Parks and Open Space Division of the Department of Public Works develop and adopt a formal policy that identifies ways to minimize the use of leaf blowers when possible. The Parks and Open Space Division is exempt from Articles 8.15 and 8.31, but this should not prevent the division from striving to reduce its use of leaf blowers.

Additional Process Required

Recommendation 1: *The committee recommends that Article 8.15 of the Bylaws be reviewed and, possibly, rewritten to update its requirements and improve its clarity.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend that Article 8.15 of the Town's Bylaws be reviewed and, possibly, rewritten.

After listening to testimony and reviewing the Bylaw, the committee believes that Article 8.15 is confusing and outdated. This led to the conclusion that a comprehensive review of the noise levels permitted by the Article should occur to ensure they reflect technological improvements and efficiencies that have been realized since the bylaw was written. The comprehensive review should also consider whether Article 8.31 of the Town's Bylaws should be folded into Article 8.15. Currently, the rules that govern gasoline powered leaf blowers are found in Articles 8.15 and 8.31. Finally, the comprehensive review should specifically consider what the appropriate noise level is when two or more leaf blowers are operating simultaneously in close proximity. Currently, this practice is permissible even if the cumulative noise is greater than the amount allowed for a single leaf blower.

Recommendation 2: *The committee recommends that a public process be undertaken to consider whether the restrictions that currently apply to gasoline powered leaf blowers in Article 8.31 of the Bylaws should be extended to leaf blowers powered by other means.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend a public process be convened to discuss extending the restrictions on leaf blowers to non-gasoline powered equipment.

The committee heard passionate testimony on this issue that touched on quality of life, and scientific and operational lawn care needs. Because a recommendation to extend the rules currently in place for gasoline powered leaf blowers to leaf blowers powered by other means was outside the committee's charge and because the committee lacked the technical expertise to make a fully informed recommendation, the Selectmen's Noise Bylaw Committee did not take the question up. Instead the committee recommends that a public process informed by the technical and practical knowledge necessary to address this question be convened and that appropriate action be taken.

Recommendation 3: *The committee recommends that the word "portable" be explicitly defined in Articles 8.15 and 8.31 of the Bylaws.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend a definitive definition of the word "portable" in Articles 8.15 and 8.31 be created.

After considering this question from several angles and examining the legislative record, the Selectmen's Noise Bylaw Committee was unable to arrive at a clear conclusion about what

devices are intend to be classified as portable in Articles 8.15 and 8.31. This question needs to be resolved to address issues of clarity in both Articles.

Recommendation 4: *The committee recommends that consideration be given to citing both the contractor and property owner when a landscape contractor violates Article 8.15 and/or 8.31 of the Bylaws.*

At its June 24th meeting, the Selectmen's Noise Bylaw Committee voted 7-0 to recommend consideration be given to citing both the contractor and property owner when a landscape contractor violates Article 8.15 and/or 8.31.

The committee heard from landscape contractors that they are often pressured by their clients to violate Articles 8.15 and 8.31 of the Bylaws. Committee members observed that property owners are not punished when their contractor operates a gasoline powered leaf blower outside of the allowed times of year or when a non-dBA compliant leaf blower is used. In these situations only the contractor is warned or cited. Brookline's Nuisance Control Bylaw - Article 8.29 – allows for citations for violations of the bylaw to be issued to a property's owner as well as the violating occupant(s). The committee believes adopting the same enforcement strategy for Articles 8.15 and 8.31 could lead to better compliance by landscape contractors; citing property owners as well as the violator could decrease client pressure to violate these two articles.

Acknowledgements

The Selectmen's Noise Bylaw Committee thanks all Brookline residents, Town Meeting Members, landscape contractors, and community leaders that offered their views to the committee. The committee thanks Chief of Police Dan O'Leary, Commissioner of Public Works Andy Papastergion, Town Counsel Joslin Murphy, and, especially, Patty Parks for their assistance to the committee in discharging its responsibilities.

Appendix 1: Committee Membership

Selectman Ben Franco, Chair
Daniel Reuven Fishman
Neil Gordon
Judy Meyers
Richard Nangle
Irene Scharf
Beth Shuman*
Maura Toomey

*Beth Shuman served as a member of the committee until her resignation on June 10, 2015.