

CITY OF NEWTON

IN BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, SEPTEMBER 19, 2007

Present: Ald. Johnson (Chairman), Hess-Mahan, Baker, Coletti, Lipof, Merrill, Parker, Sangiolo

Also Present: Ald. Albright, Danberg, Harney, Linsky, Mansfield, Salvucci

Others Present: Marie Lawlor (City Solicitor's Office), John Lojek (Commissioner, Inspectional Services), David Naparstek (Commission, Health and Human Services), Lt. Ken Dangelo (Newton Police Dept.), Karyn Dean (Committee Clerk)

REFERRED TO PROGRAMS & SERVICES AND FINANCE COMMITTEES

#86-07 HIS HONOR THE MAYOR requesting an appropriation in the amount of \$2,300,000 from bonded indebtedness for the purpose of funding the construction of a new synthetic turf recreation complex at Newton South High School. [03-13-07 @ 7:04 PM]

ACTION: **PUBLIC FACILITIES HELD 6-0 (Salvucci not voting) on 9/19/07 HELD 6-1-1 (Parker opposed; Sangiolo abstaining)**

REFERRED TO PROGRAMS & SERVICES, PUBLIC FACILITIES, AND FINANCE COMMITTEES

#276-06(2) HIS HONOR THE MAYOR requesting an appropriation in the amount of \$1,800,000 from bonded indebtedness for the purpose of funding the construction of a new synthetic turf recreation complex at Newton South High School.

ACTION: **PUBLIC FACILITIES HELD 6-0 (Salvucci not voting) on 9/19/07 HELD 6-1-1 (Parker opposed; Sangiolo abstaining)**

NOTE: The Programs and Services Committee met jointly with the Public Facilities Committee for discussion of items #86-07 and #276-06(2). Please refer to the Public Facilities Committee Report for details of the discussion.

#329-05 ALD. JOHNSON & ALD. ALBRIGHT requesting that the **Noise Ordinance** be revised and updated to better reflect the noise problem being faced by the City.

ACTION: **HELD 4-0-0 (Parker, Merrill, Coletti, Lipof not voting)**

NOTE:

Introduction of Public Meeting

Ald. Johnson opened the session and explained the format for the public meeting. She asked all present, who would like to have the opportunity to speak, to use the sign-up sheets. She also asked that all present be respectful of the forum and allow speakers to do so uninterrupted. Each speaker would be allowed 4 minutes. Ald. Hess-Mahan presided over the discussion as Ald. Johnson was one of the sponsors of item.

Background of the Task Force

Ald. Johnson said she was not on the Board of Aldermen when this ordinance was originally introduced. In some work she had done with constituents in Ward 2, and in discussions she had with the Police Dept., it became very obvious to her and other members of the Board that they needed to go back and revisit the ordinance to see what was working well and what wasn't. She put together a mini task force. The members of the Task Force, from the Board of Aldermen, were Susan Albright, George Mansfield, Ted Hess-Mahan and Marcia Johnson. The other members were former Aldermen and President of the Board, Brooke Lipsitt, Lt. Aucoin from the Newton Police Department, Commissioner of Inspectional Services, John Lojek, and Marie Lawlor of the City Solicitor's Office. They also had Commissioner of Health and Human Services, David Naparstek, as a consultant.

Goal of Ordinance Change

What they were trying to do was to protect the quality of life by re-examining noise levels and what was regulated based on changing times and the implementation of the existing ordinance. She said she has worked in corporate America for many years, and there was a huge movement to decentralize businesses. That meant that many people were working in home based offices, and therefore home during the day much more than in times past. These people were regularly being disturbed by the noise around their homes from landscaping equipment which had prompted many complaints.

Research

- The Task Force looked at noise ordinances from Watertown, Massachusetts, Concord, New Hampshire, Boston, Los Angeles, Phoenix, Salt Lake City, Madison, Wisconsin, Denver, and Chicago.
- They also looked at expert groups. They referred to the League for the Hard of Hearing, OSHA, and the American Speech, Language and Hearing Association to look at standards for noise. As a result, they came up with some edits to Newton's noise ordinance.

Main Points:

- The main thrust of the new ordinance was to lower the decibel levels of, primarily, yard and maintenance equipment down to 65 decibels.
- The transition would happen over 4 years, as with the light ordinance. People who had equipment that measured above 65 decibels would have 4 years to transition to the quieter equipment.
- The other area they were looking at was noise levels with HVAC. This was a new piece that would be added to the ordinance.
- The **current** ordinance restricts use of yard and maintenance equipment before 9:30am on Saturdays and Sundays, and weekdays before 7:00am. She asked landscapers to keep that in mind while working with their clients.

Questions from the Committee

Ald. Baker asked that when they get to the working session, if there could be a way to summarize the changes. He felt that the comparison sheet was a little hard to follow and that an oral summary could be very helpful. *Ald. Johnson* said she would be happy to do that.

Ald. Coletti asked if they were proposing to drop the decibel level from 85 to 65. *Ald. Johnson* said that it changed depending on the type of equipment. For the yard equipment it would go down to 65 decibels over a 4 year period.

Ald. Hess-Mahan noted that the redlined version of the current ordinance showing the proposed changes can be found on the City's website.

PUBLIC COMMENT – NOISE ORDINANCE

Opposed to Changing the Ordinance

Joe Caruso, 26 Laurel Ave. Mr. Caruso said he was a landscaper and he thought that the equipment that would be affected by this should be grandfathered in. When these pieces of equipment needed replacing, then they could purchase equipment that met the 65 decibel standard. However, he felt that addressing the manufacturers was in order, making it a state-wide issue and mandating that manufacturers make more equipment that met this standard. *Ald. Johnson* asked what the lifespan of a backpack leaf blower or a trimmer was and Mr. Caruso said about 4 years.

Eric Friedberg, 130 Crafts St. Mr. Friedberg said he was concerned that it would be expensive to replace air conditioning units if that fell under new restrictions. *Ald. Lipof* said that changes in the air conditioning restrictions would be for major air conditioning units on businesses primarily. Mr. Friedberg went on to say that he was a landscaper for 10 years and that raking a lawn was very tiring and using a leaf blower was more

efficient. He said that this was a large city and therefore residents should expect to live with a noisy environment. If residents didn't like that, he suggested they move to Maine.

Larry Flynn, 5 Adella Ave. He said that people were being hyperbolic in describing the noise, as he felt the majority of people in the city actually employ landscapers. He also felt that the 65 decibel level should be for all pieces of equipment, not just a selected few. He also wanted some explanation of the "criminal" fines that were mentioned.

Fines

Marie Lawlor of the City Solicitors office stated that any violation of any Newton ordinance could potentially see a criminal misdemeanor imposed. Specifically in the current noise ordinance, there was a provision that said that violations of this ordinance can be a criminal misdemeanor with a fine up to \$100. The proposed change added the option for the enforcing police department to issue a civil ticket with a fine structure. If a person did not pay the ticket, it could escalate into criminal exposure just as with a parking ticket.

Ald. Sangiolo asked that the Newton Police Dept. provide the Committee with a report of noise ordinance calls and fines that have been imposed. Lt. Dangelo and Lt. Aucoin are preparing that report and will have it to the Committee Clerk in the next few days.

Show of Hands

Ald. Coletti said he'd like Ald. Hess-Mahan to ask for a show of hands from the public so they could gauge where people stood. The show of hands demonstrated a fairly even distribution.

In Favor of Changing the Ordinance

David Conklin, 136 Charlemont St. He said it was difficult living next to H.C. Starck, a big commercial operation, as the landscapers came to blow off the empty parking lots on the weekends and spent an inordinate amount of time doing it. He said that the police should be given some meters to measure the noise, and Ald. Johnson informed him that they do have a noise meter. He said he thought this was an important initiative and that there was a right of quiet enjoyment of private property. He also said that noise was a form of pollution imposed upon people without their request and it was important to minimize, as much as possible, all forms of pollution.

Stanley Fay, 27 Littlefield Rd. Mr. Fay said he was a college professor and spent a great deal of time at home working. He appreciated the quiet to do this work and the quiet has depreciated over the years. At 7am each morning the neighborhood is filled with noise, as well as exhaust fumes, from landscape services and he said it was extremely disturbing. He read 2 op-ed pieces from the Tab which are attached to this report.

William J. Gleason, 42 Wyman St. Mr. Gleason said he moved to Newton 10 years ago from Worcester and was amazed and annoyed by the leaf blower noise, especially when

several machines and/or crews were working at once. He felt it was very much in order to update the noise level restrictions. Older people who were at home, and were not well, needed some peace. He felt that people using the leaf blowers were damaging their own hearing and that very few were wearing ear protection.

Beth Schroeder, 151 Ridge Ave. She said there are 50 houses on her street and between 50% and 75% of those people were home during the day and were trapped in the noise. The noise from landscapers was so bad that she could not work outside. Ald. Sangiolo asked if lowering the decibel level to 65 from 80 decibels will be helpful. Ms. Schroeder said she felt that it would help.

Richard Hardaway, 180 Forest Ave. Mr. Hardaway wanted to know where sound levels would be measured in determining the decibel levels. Ald. Johnson said that it would be 50 feet from the source. He said that the ordinance was not currently enforced and that it was regularly broken. Ald. Johnson informed him that he could call the Police Dept. and also call the company to let them know the ordinance, as some don't know. He said that existing equipment could be made quieter by turning down the throttle, although it would make them slightly less efficient. He felt that the electric blower took longer, but was quieter. He recognized that the services would cost more, but felt it was a fair price to not make everyone else miserable. He said that people using landscaping companies should not have the right to inflict the noise of them upon their neighbors.

Margaret Fogel, 55 Halcyon Rd. She said she supports the ordinance and finds the noise to be unbearable. There used to be an alternative that worked just fine before the advent of the gas leaf blower. She said there were many viable, quieter alternatives and that she was 65 and raked her own leaves and it didn't take that long.

Marilyn Frakman, 65 Mary Ellen Rd. Her property abuts the Newton Cemetery and all day long she had to listen to the landscaping noise. She was concerned about enforcement of the ordinance because right now, many contractors do start at 7am on Saturdays. She was also concerned about house and car alarms that go off for hours. Lt. Dangelo said that if a house alarm goes off 3 times in a calendar year, the homeowner was fined.

Richard Mann, 184 Washington St He has lived on Beacon St., Crafts St., and now on the "circle of death" where the Sheraton straddles the Mass Pike. He said he had sound proofed window treatments on his windows to help with the noise.

Richard Primack, 16 Stiles Terr. He said he has lived in Newton for 57 years and has found that the noise in the neighborhoods has increased dramatically in that time. He felt that if the ordinance was not put in place, the noise will increase in the years to come. A system where the equipment was quieter should be put in place.

Stephanie Karger, 38 Wauwinet Rd. She said she didn't know what 65 decibels would sounds like and was relying on the research that said it was reasonable. Ms. Karger said she chose to live in Newton because it was a quiet city. Now that more people work at

home or spend the day at home, they were entitled to quiet. If someone chose to use a landscape service that polluted the environment, then they had to expect to pay. Fines could be considered a cost of doing business to companies, so repeat offenders needed some sort of stronger incentive to not break the ordinance.

Jim Fathy, 56 Lindbergh Ave. He was in favor of the leaf blower ordinance. He has read that leaf blowers were not only noisy, but also polluted the air. The landscapers may have to hire more workers to get the job done by raking, but if people wanted their yards taken care of, they'd have to pay for it.

Ernie Zupancic, 37 Cheswick Rd. He said he and his wife found it hard to enjoy their home with the various sources of noise. He felt confident that the landscapers would be able to manage changes in economically and environmentally sound ways as they have done in other cities with similar ordinances.

Cathy Goode, 30 Glendale Rd. She said that in the Newton city noise ordinance there was a guarantee of quiet enjoyment of property, and she felt it should be honored. She said it was up to the gardeners and the people who paid for them to come up with the equipment to do the job more quietly. Every morning at 7:00am the landscaping noise started and it was from April through November. Her husband is a nurse who worked at night and would like to sleep past 7 am. She suggested a start time of 8:30 am. She felt that they should enjoy quiet as this is a suburb and not a big urban environment like Boston or Manhattan. Ald. Parker said that the current noise ordinance was not being enforced and he wondered if changing it would do any good. Ms. Goode said that enforcement was a crucial part of this and there needed to be a way to do so.

Anatol Zukerman, 17 Noble St. He said that his neighbor has been doing construction for the last 2 years. Mr. Zukerman said he used to work in construction as an architect so he was sympathetic, but he found the work the neighbor was doing from 5pm until dark was bothersome. Another neighbor had a gas powered leaf blower, and he used it each Sunday to blow any debris that was on the ground and used it excessively. He hoped this ordinance would start to put a dent into these kinds of problems which were pervasive.

Sally Wayland, 21 Herrick Rd. She wasn't sure if she would support the entire ordinance. Her main objection was the time that the noise was allowed to start. She said that she's awakened or bothered by the noise each morning from April to November. She said that the blowers were used when they were not really necessary. Moving the start time to later in the morning would make a huge difference.

Andrew Martin, 9 Applegard St. He mentioned that he worked at home and did his own landscaping, using a rake. He said there was a shifting of cost going on. The savings that might be gained by using poor technology that is very noisy was shifted onto the people who have to hear that noise. The "polluter pays" principal is fair.

Marsha Gruber, 170 Evelyn Rd. She suggested having a meeting at someone's home while some of these machines were being used to demonstrate how intrusive they were. She and her husband both worked at home and they found the noise extremely disruptive.

Bill Joplin, 24 Oak Terr. He said that even though he might go out and sit in his yard and hears a leaf blower for only 20 minutes, the effect lasts a long time. It was very anxiety producing.

Catherine Willinger, 25 Westchester Rd. She was concerned about the decibel level reading being taken 50 feet from the source. On her lot, she really can't get 50 feet away from the source if someone is near her property line using a leaf blower. The workers were of course much closer to the source and exposed to much higher levels of noise.

#422-06 ALD. HESS-MAHAN requesting creation of an ordinance prohibiting the use of portable gasoline-powered leaf blowers within the City limits.

ACTION: **HELD 4-0-0 (Parker, Merrill, Coletti, Lipof not voting)**

NOTE:

Introduction

Ald. Hess-Mahan said that he had been receiving complaints for years about the noise caused by gas powered leaf blowers. That, along with a conversation he had after church one morning with a fellow congregant about leaf blowers in her neighborhood, prompted him to look into this issue. He researched noise ordinances elsewhere and found that there were at least 300 municipalities in the United States that already had laws that restrict the use of gas powered leaf blowers or banned them outright.

Noise, Wind Speed, Emissions

He said that noise can be subjective so it's difficult to determine what is "too loud". Therefore, using a decibel level that is uniform makes that process possible. Gas powered leaf blowers in California had much stronger restrictions than what the EPA required. The gas powered leaf blowers that were sold elsewhere in the United States had higher wind speeds and higher decibels. The wind speeds started at 150 mph and got up to 280 mph. Hurricane Katrina was 155 mph. The issue with high wind speeds was that dust, debris, and particulate matter gets blown around which produced unfavorable conditions for people with respiratory ailments, heart and lung disease, the elderly, etc. This particulate matter could include herbicides, pesticides, animal excrement, lead, arsenic, etc. In terms of emissions, he said that improvements have been made recently, due in large part to the regulations and bans in other municipalities around the country. Some of the manufacturers have responded by bringing the noise level down, the emission levels down, but the wind speeds are still quite high and that brings up the problem of the particulate matter.

What is Particulate Matter (PM)

Ald Hess-Mahan read from a brochure from the California Air Resources Board:

“ Particulate Matter (PM10) pollution consists of very small liquid and solid particles floating in the air. Of greatest concern to public health are the particles small enough to be inhaled into the deepest part of the lung. These particles are less than 10 microns in diameter, about 1/7th the thickness of a human hair, and are known as PM10. This includes fine particulate matter known as PM2.5 (2.5 microns). PM10 is a major component of air pollution that threatens both our health and our environment. PM10 is among the most harmful of all air pollutants. When inhaled, these particles evade the respiratory systems natural defenses and lodge deep in the lungs. Health problems begin as the body reacts to these foreign particles. PM10 can increase the number and severity of asthma attacks, cause or aggravate bronchitis and other lung diseases and reduce the body’s ability to fight infections. Although PM can cause health problems for everyone, certain people are especially vulnerable to its adverse health effects. These sensitive populations include children, the elderly, exercising adults, and those suffering from asthma or bronchitis. Of greatest concern are recent studies that link PM10 exposure to the premature death of people who already have heart and lung disease, especially the elderly. Here are a few things businesses, individuals, and other organizations can do to immediately reduce the threat of PM10.

Ald. Hess-Mahan pointed out that the 4th item on a list of 7 was “Avoid using leaf blowers and other dust producing equipment.”

Intent of Leaf Blower Ordinance

He explained that the proposed ordinance would be an outright ban that would start in 2009. He said he started working on this in 2005, but they would consider working on a longer roll out period as with the noise ordinance to give people time to comply. After receiving many phone calls and emails from people, including those in the landscaping business, he felt that it would be fair to consider other possible remedies to address the concerns that have been raised about the noise, the debris, and the fumes.

He then noted that in years past, the leaf blowers could be heard a bit during the spring and then in the fall. But more recently, the complaints have increased as leaf blowers have proliferated. They are being used much more often than just a couple of weeks in the spring and several weeks in the fall. They’re being used for purposes other than just blowing leaves. They’re being used to blow dirt, dust, debris off patios, sidewalks, during all times of the year. He said that he would look at other alternatives, for example, banning them just from the middle of May until the middle of September. He really wanted to find an option that was a happy medium for landscapers and residents.

Affected Population

To try to figure out how many people this issue affected because they were at home during the day (working, caring for children, etc.), he went to the 2000 census for Newton. Out of 85,000 residents there were 21,695 (31.9%) people of working age who were not in the labor force. There were approximately 2,000 parents staying at home

with children, and approximately 2,900 (6.5%) people working full time at home. That does not take into account the number of people who work part time at home.

PUBLIC COMMENT – GAS LEAF BLOWER ORDINANCE

In Favor of the Ordinance

Eric Olson, 858 Watertown St., He said that banning concerned the issue of rights. People were saying that doing something was someone's "right". And he pointed out that people don't have the right to do anything they want. When he was a child, there was an incinerator in their basement and they burned trash, and they used to burn leaves, and those things were banned. He said health concerns should trump "rights" in many cases and felt this was one. He felt there were alternatives to gas leaf blowers. He said there were companies that were advertising themselves as environmentally friendly and he thought they were making money as there was demand for it. He recommended that the other landscapers listen to that demand. He also thought using solar powered leaf blowers would be the best solution.

Ald. Parker and Sangiolo said they that thought using an electric leaf blower would stir up as much debris and particulate matter as a gas powered leaf blower.

John Leith, 162 Islington Rd. He said he supports the ordinance, although it may need some modifications. He supports some restrictions on the hours as well as the noise level.

Ariel and Stephanie Karger, 38 Walnut St. They have many large trees on their property which produced large quantities of leaves in the fall. For the last 25 years they have raked and collected the leaves themselves. The machines in the neighborhood were horribly loud and disruptive. They said that using leaf blowers in October made sense, but the year round use for blowing dust and debris did not make sense at all.

David Eggleton, 28 Rich Rd. Woburn, MA He felt there should be a public education plan to go along with a ban on the leaf blowers. People needed to be ready for the day that gasoline costs a whole lot more and find alternatives. People will start making decisions about what to spend money on. He felt that composting and doing land care instead of grounds management was a better direction to go in.

Paul Bloom, 59 Philbrook Rd. He didn't think there should be such division on this topic. He felt a happy medium could be found in a seasonal ban and stricter time restrictions. He said times were changing and people had to change with it including getting used to increased noise in the community, so some of this needed to be tolerated. He said he can't afford a landscaper and can't do the work himself if he can't use a gas leaf blower.

Guive Mirfendereski, 24 Carleton St. He was in favor because it was pro health, pro environment and pro quality of life. He also felt that enforcing the decibel levels restrictions would be impossible. He suggested educating residents in the value of going green and requiring from the landscapers some certification of voluntary compliance with

some of the more general socially valuable standards. If that didn't work, then perhaps a ban would be in order.

Opposed to the Ordinance

Joe Caruso, 26 Laurel Ave. He said that using a rake and broom over leaf blowers would triple the cost of a landscaping "clean up" as it would necessitate hiring twice as many workers to get the job done. Electric blowers created a problem as not all homes have outdoor outlets, therefore they would have to bring a gas powered generator to power the electric blowers which would be noisier than the gas leaf blower alone. They also kick up as much debris as a gas powered blower. He said that if landscapers had to replace their blowers, the cost would be carried by the customer. He said that they used blowers to clean driveways and sidewalks as well. There were several manufacturers that had 65 decibel blowers on the market, and he thought the manufacturers should be compelled to make quieter machines. But in the meantime, owners of gas blowers should be allowed to use them until they wear out (he said they last about 3-4 years). After that, they could replace them with quieter models. Ald. Danberg suggested looking into 4 cycle leaf blowers as an alternative.

Ald. Hess-Mahan said there were a number of ways to address this issue and his option was just one. He said he knew Cambridge was looking to measure noise and emissions and allowing only certain models to be used, both gas and electric. Another approach implemented in other communities, was a seasonal ban (May 15 – Sept. 15). He wondered if either of those approaches would address the concerns of the landscapers. Mr. Caruso said that was unacceptable. He needed to use the blowers every day. He said that money was the bottom line.

Eric Friedberg, 130 Crafts St. He said that fall clean up costs will rise to \$2000 if gas blowers can't be used. He told the landscapers to put higher prices on their bills starting now. He went on to say that if this ordinance was passed, that on his property on Crafts Street he would "grow a forest and blow things up on my lawn that makes this City look pathetic. I will have inflatables, I'll turn it into a circus."

Rob Cerra, 131 Crafts St. He said it was going to cost the City more money to upkeep their green spaces if this ban was imposed.

Enrico Corsetti, 141 Webster St. He said that going to 65 decibels was unrealistic without going after the manufacturers. He offered several print outs of blowers on the market that showed decibel levels of 77. (Kawasaki, Ecco, RedMax - attached to this report). He felt it was unreasonable to ask them not to use equipment that was sanctioned by the federal government and OSHA. Mr. Corsetti said there were huge homes in this

City who needed these landscaping services. He felt that trying to come together in a happy medium was the way to go but felt their hands would be tied with this ban. He said that lawnmowers were higher than 65 decibels as well. He also had a comparison of gas and electric leaf blowers – he said it showed an electric blower and a gas backpack blower

kicked up the same amount of PM (60). A gas handheld only kicked up 40.

(Determination Particulate Emission Rates from Leaf Blowers - attached to report).

Next Steps

Ald. Johnson said that the next step would be for the Committee would be to discuss this further in Programs and Services. They would take the public input into consideration and make changes where appropriate. Ald. Sangiolo requested that Parks and Recreation and/or DPW be invited in to give their assessment on how these ordinances would be implemented and offer recommendations on timeframes, seasons, etc.

Ald. Sangiolo moved to hold both items. The Committee approved to hold.

#214-04(2) ELECTION SECRETARY submitting for a re-vote previously submitted Home Rule Legislation approved by the Board of Aldermen on March 21, 2005 relative to setting the date for preliminary elections. [08-24-07 @2:40 PM]

ACTION: **APPROVED 4-0 (Parker, Merrill, Coletti, Lipof not voting)**

NOTE: Ald. Johnson explained that on March 8, 2005 this item was passed. Due to an oversight in the Executive Department, it never got to the legislature. Because it was passed by a previous Board, the legislature would not take it up now. The Committee needed to pass it again so it could be submitted to the legislature. The Committee voted approval.

Motion to Adjourn.

Respectfully Submitted,

Marcia Johnson, Chairman