

CITY OF NEWTON

BOARD OF ALDERMEN

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, OCTOBER 22, 2008

Present: Ald. Johnson (Chairman), Freedman (Vice Chairman), Baker, Brandel, Hess-Mahan, Merrill, Parker, and Sangiolo

Others Present: Karyn Dean, (Committee Clerk)

#329-05(2) ALD. PARKER & JOHNSON requesting further amendment to the noise ordinance to: improve enforceability and effectiveness of the ordinance; remove the source-based exemption for noise generated by birds, and; address the differential treatment of construction noise on weekends.
[08-26-08 @ 3:15 PM]

ACTION: **HELD 8-0**

NOTE: Ald. Freedman started the meeting as acting Chairman. Ald. Parker explained that there had been much work done on updating the noise ordinance recently. He felt there were a few items that needed further attention. Instead of delaying the passage of the entire ordinance, it was decided that an item would be docketed to address these concerns.

Bird Exemption

Ald. Parker explained that there was an exemption in the current noise ordinance for dogs and birds. He felt it did not matter what the noise source was if there was a disruption of someone's daily life. He noted there was a barking dog ordinance, but there was no restriction on bird generated noise and it posed a significant quality of life issue for those residents who lived next to places where fowl was being kept. This amendment would not say that people could not keep fowl, it would just say that the same restrictions would apply in terms of their noise levels. He believed there were approximately 40 residential locations in the city on which fowl were being kept. It was legal under Massachusetts General Law and he was not suggesting that it shouldn't be, just that there should not be a source based exemption for one type of noise source. Ald. Parker felt there was no public policy justification for exempting one particular noise source. He said he checked with the Law Department and this change would not conflict with any state law or regulation.

Resident Complaints

Ald. Parker said that he had received several complaints from residents about this problem and that Ald. Johnson had as well. A Newton resident, Jane Tardif, testified before the committee in the past and Ald. Parker said some people did not want to come

forward as they were concerned about repercussions from their neighbors. He said it was not a widespread issue, but for the population of people that were affected, it was a significant problem.

Mr. Paul Loranger of 67 Brooks Avenue in Newtonville said that his property abutted a residence that kept fowl. His house was about a foot from the property line and the coop was about 20 feet from the property line. He said the chickens were making noise from dawn until dusk. The neighbor had a type of chicken that was very “screech oriented” and the noise was constant. Mr. Loranger said his quality of life has been terrible since the chickens moved next door and he has considered selling his property because it was so bad. He said that he has called the animal control officer out of sheer desperation but was told there nothing could be done. He hoped that something could be done about it because he was exposed to this noise every single day and it was extremely upsetting. The person he rented to was also extremely disturbed by this. He was unable to work at home due to the noise.

Previous Discussions on Birds

Ald. Baker noted that this had been brought up in the past by Ald. Bauckman. Ald. Parker explained that there had been an attempt to combine this with the barking dog ordinance but they found during their deliberations that there was no point to the barking dog ordinance and it should be eliminated. He said it got too complicated and was dropped. He felt his current proposal was a much simpler solution. Ald. Hess-Mahan said the barking dog ordinance had been enforced.

Remediation

Ald. Freedman asked how chicken owners could remediate any noise problem. Ald. Parker said that the noise ordinance was not easy to enforce but this would at least allow some discussion with the few cases that were involved. On Mr. Loranger’s street, for example, the chickens could be moved to the coop on the property that was further away from the neighbor and did not cause disruption.

Ald. Hess-Mahan said that chicken noise can be considerable from his experience. He felt the noise ordinance might not be the best way to remediate the problem and wondered if there could be a better, more practical solution. Ald. Baker agreed. He was surprised that there were chicken coops in the city and wondered why there was some privilege that allowed people to do that. He would like to find out more about this issue. Ald. Parker felt it was a vestige of Newton’s agricultural history. He did not want to make this a personal issue. He just felt that there should not be an exemption for any particular noise source. He felt the impact of this change would help the few people being adversely affected by the noise and would not cause any sort of widespread disruption.

Public Meeting

Ald. Hess-Mahan said that Ald. Johnson wanted to hold a public meeting in order to allow residents an opportunity to comment on this. He said he had not been aware of any complaints about this issue but was interested in hearing from people on both sides of this issue. Ald. Parker said that public comment had already been heard at the last round of noise ordinance discussions and felt it was a very simple issue. Ald. Hess-Mahan, Brandel and Baker felt further research and public comment were necessary.

Lawn Care Equipment

Ald. Parker said that recent amendment to the noise ordinance was problematic as the section on lawn care equipment was based on individual pieces of equipment. Each piece of equipment had an allowable dB level (lawnmowers, leaf blowers, etc.). The problem was that if many pieces of equipment were running at the same time, the cumulative effect was higher than the maximum for any particular piece. He said this was a common occurrence when lawn care companies worked on residences. Ald. Parker felt it was an oversight to not include the cumulative total. The noise pollution section did not apply to lawn care equipment. The lawn care equipment section was an exemption to the noise pollution section and had its own specifications.

Ald. Parker proposed the following amendment:

“The cumulative noise level from multiple pieces of equipment operating simultaneously on the same site shall not exceed the maximum noise levels allowed when measured at the nearest lot line.”

Ald. Freedman thought there needed to be some clarification on what the maximum noise level would be. Ald. Parker said he would have Marie Lawlor re-draft the amendment to clarify that. Ald. Hess-Mahan said he thought this will be a big concern for landscaping companies. Ald. Baker pointed out that this applied only to lawn care equipment and wondered if it would lead to the inclusion of construction equipment as well.

Construction Hours

Ald. Parker reminded the committee that there had been amendment to the section of the noise ordinance that dealt with allowable times for construction noise on weekends which made Saturday and Sunday equal. It was approved in committee but failed on the floor of the Board. The proposal had been to allow construction on both Saturday and Sunday from 11am until 7pm. The two arguments against this were that Sunday had always been the traditional “day off” and that construction companies needed to start early on Saturday to get the work done. He noted that waivers could be granted by the Mayor for either day for work as necessary.

The two aspects of this issue were the enjoyment of quiet during some portion of the weekend and the ability of people to do work on their own homes on the weekend. There were a group of people who lived in the city who could not do work on Saturday for religious reasons and who worked Monday through Friday. This ordinance left them

with no opportunity to do work on their own homes on the only day left available to them. He said he has heard from many people about this issue and that people were afraid of backlash for raising this publicly. He wanted to speak for them. He also noted that the waiver process would not be appropriate for their needs. For example, if a person wanted to work on their shed on a Sunday, going to the Mayor for a waiver would be an undue burden.

Proposed Amendments

Ald. Parker proposed, as an alternative, negotiations with neighbors and abutters to choose the day they prefer construction to take place. He also proposed making Saturday and Sunday exactly the same in the ordinance and he felt this would remove the discrimination. Commercial construction on Sunday would still be prohibited by state law, but private homeowners would be able to do work on their homes. This would insure that big, noisy construction projects would not be occurring on Sundays. He felt this was the simplest solution. He would like to make the morning start time one hour later than the current start time and have the same hours apply to both days.

Ald. Hess-Mahan pointed out the prohibited behavior as currently stated in the noise ordinance for Sunday. This included hand power tools and hand tools that made noise. He felt this was unduly restrictive and this issue deserved review. Ald. Brandel agreed. He said people were doing work on their homes on Sunday and as long as they were using common sense and not being unduly disruptive, he did not see anything wrong with that. He felt that would be a good place to start. Ald. Baker said that he wouldn't work on the scope of the ordinance and felt it was the best version he had seen.

Follow up

Ald. Johnson asked Ald. Parker to share his research on how other communities deal with this issue. Ald. Brandel felt Ald. Parker should limit his research to communities within Massachusetts because of the restrictions of the Blue Laws, and to communities with similar population density. Ald. Johnson would like to have a public meeting on this issue. She would also like some conversations to take place beforehand with construction companies in Newton to see if some common ground could be found. Ald. Parker recognized that there were competing interests in this issue and hoped to find some creative solutions that addressed them. Ald. Parker moved to hold this item and the committee voted in favor.

REFERRED TO PUB FAC, PROG. & SERV. AND FINANCE COMMITTEES

#357-08 HIS HONOR THE MAYOR requesting authorization to appropriate and expend twenty-five thousand dollars (\$25,000) from Budget Reserve for additional design options for the City properties at Crystal Lake. [09-30-08 @ 4:16 PM]

ACTION: **PUBLIC FACILITIES APPROVED 4-1 on 10-22-08 (Ald. Salvucci opposed; Ald. Gentile not voting; Ald. Yates and Lappin absent) APPROVED 5-0 (Ald. Freedman, Merrill, Sangiolo not voting)**

NOTE: The Programs & Services Committee met jointly with the Public Facilities Committee on this item. Please see the Public Facilities Committee Report of October 22, 2008 for the details of this discussion.

Motion to adjourn.

Respectfully Submitted,

Marcia Johnson, Chairman