

Recommendations of the Noise Bylaw Committee

Things We Can Do:

Public Education

The Committee heard that some contractors operating in Brookline and/or their staff are not aware of the Brookline specific restrictions on leaf blowers. In order to address contractor lack of awareness, **the committee recommends the Town continue its current practice of mailing notice to all contractors about the existence of Articles 8.15 and 8.31 (and the registration system).**

We heard that contractors are not the only population that is unaware of the specific Brookline restrictions on leaf blowers. In fact, there seems to be an impression by those Brookline residents that are aware of the Town's leaf blower restrictions that they only apply to contractors and no to residents. Separately, the Committee observed that there is no single easy to reference document that outlines the rules on the use of leaf blowers. To solve these problems, **the committee recommends a pamphlet be developed that explains the rules that govern use of leaf blowers in Brookline and that the pamphlet be printed in multiple languages (English and Spanish at minimum.** The pamphlet could be distributed to multiple audiences at different times of the year (at police calls, at Brookline Day, at Town Hall and the libraries).

To further raise public awareness about the times of the year it is appropriate (and inappropriate) to use a leaf blower, **the committee recommends increased public advertising around the times leaf blower begin to become permissible and impermissible.** Advertising could take place:

- At key intersections (as is done for Town elections)
- At the Town dump around hazardous waste disposal days
- As an insert in Town wide mailings (property tax and/or motor vehicle excise tax)
- On the Town's social media platforms (Twitter and Facebook)
- As a paid advertisement in the TAB

As a means of increasing awareness by residents of the Town about the leaf blower restrictions, **the committee recommends that the Town partner with neighborhood associations and civic groups to spread the word.**

Bylaw Changes

The committee recommends that Article 8.31 be edited to improve its readability, to clarify who and what it applies to, and to include a reference to Article 8.15. It is the opinion of the committee that Article 8.31 is difficult to read and that hinders compliance. (see text)

The committee recommends that Article 8.15 be edited to include a reference to Article 8.31. (See Text)

The committee heard that contractors lack awareness of the leaf blower rules in Brookline. The Committee also heard that complaints are frequently made and the police arrive after the “offenders” have moved on. To address both these facts, **the committee recommends that Brookline implement a registration system for all landscape contractors operating in Brookline.** The system would require contractors to register with the Town before they could operate in Brookline. At the point of registration, a contractor would need to:

- Pay a small registration fee
- Provide proof that their equipment is compliant with the relevant bylaw (8.15)
- Provide proof that their staff has been trained on how to comply with Brookline’s bylaws (8.15 and 8.31)
- Provide a list of the properties at which they have been contracted to provide landscaping services

Policy/Procedure Changes

Article 8.15 and 8.31 should be proactively enforced; the committee recommends this be the formal policy of the Town. Enforcement should not be simply complaint driven. Those charged with enforcing the bylaws anticipate where problems might occur based on past experience and should not wait for a complaint before undertaking enforcement activities. There is a perception by residents that an informal policy is in place against the issuance of citations for violations of Article 8.15 and 8.31 in favor of warnings. To the extent such an informal policy exists it should be eliminated. While enforcement officials should not be encouraged to write warnings, they should also not be encouraged to solely write citations either. The committee calls on enforcement to be conducted using discretion.

As a policy, all equipment DPW purchases should comply with the Noise Bylaw (Article 8.15).

As a policy, the Parks and Open Space Division of the DPW should develop a policy to limit the division’s use of leaf blowers.

Things We Can’t Do (Beyond The Scope)

Recommendations for Further Action

After listening to testimony and reviewing the Bylaws, **the committee recommends that Article 8.15 be revisited and possibly rewritten in its entirety.** Article 8.15 is confusing and outdated and 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. Another question that the comprehensive review should tackle is whether Article 8.31 should be folded into Article

8.15 entirely. Finally, the much discussed situation of two or more leaf blowers operating simultaneously next to one another needs to be addressed in Article 8.15. Currently, this practice is permissible even if the cumulative noise is greater than the amount allowed for a single leaf blower.

Based on the testimony the committee has heard, **the committee believes an in-depth investigation of whether the restrictions that currently apply to gasoline powered leaf blowers should be extended to electric leaf blowers is in order.** The committee, in effect, believes in depth study of treating gas and non-gas power leaf blowers in the same way needs to occur.

The word “portable” needs to be explicitly defined in Article 8.15 and 8.31 as it applies to leaf blowers. An examination of the legislative record does not yield a clear view into legislative intent and there needs to be clarity about what types of devices the bylaws consider portable.

The committee believes thought should be given to expanding the departments empowered to enforce Article 8.31 to match those empowered to enforce Article 8.15. This would mean allowing the DPW, Building, and Health Departments to enforce Article 8.31.

Minutes of the Noise Bylaw Committee
Selectmen's Conference Room
May 18, 2015 7:00 PM

At 7:05 PM Selectman Ben Franco, serving as chair, called the meeting to order.

Mr. Franco briefly discussed the committee's work to this point and summarized what the committee was scheduled to discuss at the meeting.

Mr. Franco asked committee members if they were comfortable approving the proposed minutes of the committee's April 29 meeting. Several members proposed amendments. The minutes were approved 5-0, as amended.

Mr. Franco turned the meeting over to Commissioner of Public Works, Andy Pappastergion for a presentation about the Noise Control and Leaf Blower Bylaws and his department's experience with the bylaws.

Commissioner Pappastergion said his department is very involved with Articles 8.15 of the Bylaws. The DPW complies with the restrictions placed on it under Article 8.15; since 2010 all the department's backpack leaf blowers have complied with the Noise Bylaw.

Commissioner Pappastergion told the committee that his department is most involved with Article 8.15. The DPW offers testing of equipment to ensure it is compliant with the bylaw on Tuesdays from 1-3 during the lawn care season. In order to show that a machine has been tested and that it complies with Article 8.15, the DPW affixes a sticker to the machine. The DPW began offering noise testing in fall 2010. To date the DPW has not charged a testing fee, and between fall, 2010 and fall, 2014 the DPW conducted 36 separate tests on machines. The DPW has also done public education about Article 8.15 and Article 8.31, most notably through the inclusion of information about it in the department's annual Public Works Guide and through posting information on the web.

Commissioner Pappastergion told the committee that his department's interactions with Article 8.31 are very limited, and that his department is not subject to the restrictions it sets in place. When asked, the Commissioner said he was unaware why the Public Works Department was exempted from the provision of Article 8.31.

Mr. Franco then asked the Commissioner to speak about any enforcement activities his department conducts for Articles 8.15 and 8.31.

Commissioner Pappastergion said his department lacks the wo/man power to conduct significant enforcement activities. While his department is empowered to do enforcement of various bylaws, it focuses mostly on enforcing sanitation rules. His personal opinion is that the police need to enforce most bylaws (including Articles 8.15 and 8.31). There are countless examples of his sanitation inspectors trying to enforce bylaws unsuccessfully.

Commissioner Pappastergion feels as though enforcers need to have a badge and a uniform to be seen as legitimate.

Kevin Johnson, Director of the Highway Division of the DPW, added that despite the Town's efforts to draw attention to these rules, there is little evidence of successfully getting people's attention. As an example, Mr. Johnson pointed to a recent meeting about Article 8.15 and 8.31 geared to landscape contractors where attendance was light.

Mr. Franco asked if Commissioner Pappastergion or Mr. Johnson knew the breakdown of the 36 tests the DPW had conducted between residents and contractors. Mr. Johnson said approximately 30% of the tests were done on equipment brought to the department by homeowners.

Mr. Gordon asked if the Commissioner and Mr. Johnson felt as though their educational efforts were reaching all the contractors operating in town. There was general agreement that efforts should be undertaken to improve the mailing list/contact list for private landscape contractors operating in Town.

A member of the public asked if enforcement interactions could be focused on education rather than the issuance of citations. Mr. Franco said that the committee had previously expressed the opinion that that discretion should determine the outcome of an enforcement interaction. The issuance of citations should not be prioritized, but every enforcement interaction should not result in a warning either.

Ms. Meyers asked if, given the Commissioner's comments, the DPW should be removed from the bylaws as enforcers of Articles 8.15 and 8.31. There was agreement that this change should not be made.

Maura Toomey asked what role BrookOnLine plays in reporting problems with Articles 8.15 and 8.31. Mr. Johnson replied that BrookOnLine is a great tool for reporting static problems (a street light is out, a pothole needs to be filled) but it does not lend itself to reporting problems like noise when "offenders" are not static and the offensive activity often occurs for a short amount of time.

Michael Piering asked why the Town is exempted from Article 8.31 and part of 8.15.

Commissioner Pappastergion responded that the decision was made to exempt the DPW for two reasons:

- To allow the DPW (mostly the Parks and Open Space Division) to carry out their work more quickly
- To control costs – if the DPW were to be subject to the provisions of Articles 8.15 and 8.31, the department would need to hire more personnel

Mr. Piering responded that these issues are not unique to the DPW – private contractors and residents are subject to the same pressures. He believes everyone should be treated the same. In particular, he has observed that cleaning contractors have begun using leaf

blowers and that they regularly violate the Town's rules on noise and allowed times of use.

Mr. Franco asked if the DPW has a policy that governs when the department can use a leaf blower and when employees should use a rake or broom. The Commissioner responded that no such policy exists.

Mr. Piering asked if the committee had an opinion about extending the time periods during which leaf blowers may be used in Town. Cambridge allows leaf blowers to be used March to June which seems to work for both residents and contractors. Mr. Piering also observed that the registration system is not enjoyable, but it works.

Ms. Toomey asked who is responsible for enforcement in Cambridge.

Mr. Piering replied that he is not sure, but that he knows the City of Cambridge is subject to the same rules as homeowners and contractors. Interestingly, Cambridge only restricts the use of 2-stroke engines; 4-stroke engines (which are used in walk behind lawn care equipment) are not restricted.

Brian Logee stated he thinks the use of 2-stroke equipment should be encouraged; it is easier to control the noise generated by this equipment. Having said that, he and other contractors are actively exploring switching to electric equipment so as not to be subject to the rules. This is counterintuitive because electric equipment is generally louder and more disruptive.

Ms. Meyers observed that introducing too many restrictions could result in a worse situation; we need to be careful what we wish for,

Mr. Gordon agreed and stated that a subsequent committee needs to be formed to study these issues in a comprehensive way.

Mr. Fishman asked the contractors present what they would change if they could. How would they balance emissions and restrictions on noise?

Mr. Piering observed that the most effective way to deal with the noise issue is to get homeowners to take notice. If homeowners are aware of the rules they will push their contractors to comply or at least not push them to violate the rules. Most business owners want to play by the rules, but they are pressured by their clients to ignore them.

Mr. Logee suggested that it might be effective to change the bylaws so violations are issued both to the contractor and the homeowner they are working for (in cases where contractors are cited).

Mr. Fishman asked if the contractors thought there was a way the Town should be collecting the names of contractors operating in Town.

Mr. Franco said there is no silver bullet here; some effort just needs to be put into it.

Mr. Franco then opened a discussion about the recommendations the committee has expressed a desire to pursue at previous meetings. He said the list he distributed is in no way a proposed list of recommendations; it is simply the running list he has kept to this point. He then went through the list seeking input from the committee as to whether the recommendations were something the group wanted to include in a draft report or wanted to rule out.

There was general agreement that all the recommendations on the list should be included in the draft report.

Mr. Gordon recommended that the specifics of a contractor registration system not be included in the committee's report. He believes there are too many details and policy choices that need to be worked out and it would be beyond the committee's scope to make decisions about the details. There was agreement.

Ms. Meyers asked if there was an appetite to recommend that changes be made to who enforces Articles 8.15 and 8.31.

Mr. Nangle said the police should be required to carry noise meters at all times.

Mr. Franco said making a change to who enforces these laws is a significant policy decision. We can talk about it at our next meeting, but need to think it through first.

The committee voted to close the meeting at 9:15 PM.

Members Present:

Ben Franco
Daniel Fishman
Judy Meyers
Maura Toomey
Richard Nangle
Neil Gordon

Members Not Present:

Beth Shuman
Irene Scharf

Members of the Public Present:

Brian Logee
Michael Piering

Materials Reviewed:

List of recommendations discussed by the committee prepared by Mr. Franco