



Programs & Services Committee Report

City of Newton **In City Council**

Wednesday, March 9, 2016

Present: Councilors Rice (Chair), Leary (Vice Chair), Schwartz, Auchincloss, Kalis, Hess-Mahan and Baker

Absent: Councilor Sangiolo

Also Present: Councilor Norton

City Staff: Bob DeRubeis (Commissioner, Parks & Recreation), Marie Lawlor (Assistant City Solicitor), Karyn Dean (Committee Clerk)

Referred to Programs & Services and Finance Committees

#88-16

Request to transfer \$223,865 from Snow and Ice Budget Reserve for tree services
HIS HONOR THE MAYOR requesting authorization to transfer two hundred twenty-three thousand eight hundred sixty five dollars (\$223,865) from the Budget Reserve – Snow and Ice Removal Account to the following accounts:

Parks and Recreation Personnel Costs – Overtime

(0160201-513001).....\$28,280

Forestry/Tree Services

(0160201-5243).....\$195,585

[02/29/16 @ 4:03 PM]

Action: Approved 7-0

Note: Commissioner of Parks & Recreation, Bob DeRubeis explained that this request for money was necessitated by the February 5th snowstorm. The department received the third highest number of requests for tree service with this storm with 400 on the first day and 800 by the end of the week. The snow was wet and heavy and just stayed on the limbs. There were 40 trees that came down in this storm and extensive work had to be done over the following 10 days. They used both in-house as well as contractual service as they needed to get the work done in a timely manner. The in-house team saved about \$220K.

A Committee member asked if any of this money could be used for re-planting to replace lost trees. The Commissioner explained that there is money in the budget to plant trees, but that is not included in this request. The department hopes to plant over 200 trees before the year is over.

It was asked where the department stands on the backlog of trees that need to be dealt with. Commissioner DeRubeis said that list is still fairly long and over 1,300 limbs had to be picked up in the last month or so which is extremely high. There are close to 1,000 stumps in the City that need

to be dealt with and all his staff gets training on stump grinding. They will be working overtime to get those done or they will never catch up. He said they are doing well, however, with inspecting all the play sites and playgrounds to find any questionable trees that need to be removed or pruned and have taken action on those. There was a tragic incident in Chelsea where a damaged tree fell on a little boy so that prompted him to undertake those inspections immediately.

It was asked how quickly someone inspects a tree that has been called in by a resident as being problematic. The Commissioner responded that those are all inspected immediately – usually within a day or two at the most. If the tree needs to come down it gets tagged, and is put on the list to be taken down. They like to do as much preventive pruning as possible. The trees are all rated based on a USDA rating system and those with the worst grade are prioritized. If there is a tree limb on a live wire, the department calls Eversource to deal with that. There are certain things the staff can handle, but they are very careful when it comes to live wires.

Councilor Hess-Mahan moved approval and the Committee voted in favor 7-0.

#77-16 Mayor's re-appointment of Julia Malakie to Urban Tree Commission
JULIA MALAKIE, 50 Murray Road, Newton, re-appointed as a member of the URBAN TREE COMMISSION for a term to expire February 5, 2019 (60 days 5/6/16) [02/10/16 @ 10:00 AM]
Action: Approved 7-0

Note: Councilor Hess-Mahan moved approval of Ms. Malakie's re-appointment. The Committee approved unanimously without discussion.

#78-16 Mayor's re-appointment of Pete Johnson to Parks & Recreation Commission
PETE JOHNSON, 121 Fairway Drive, Newton, re-appointed as member of the PARKS & RECREATION COMMISSION for a term to expire February 25, 2019 (60 days 5/6/16) [02/10/16 @ 10:00 AM]
Action: Approved 7-0

Note: Commissioner DeRubeis explained that Mr. Johnson has been on the Commission for about 30 years and has been a valuable member. His father, Evan Johnson, was the former Commissioner of Parks & Recreation. The Commissioner recommended his re-appointment be approved and the Committee voted in favor.

#79-16 Mayor's re-appointment of Donald Fishman to Parks & Recreation Commission
DONALD FISHMAN, 68 Littlefield Road, Newton, re-appointed as a member of the PARKS & RECREATION COMMISSION for a term to expire February 25, 2019 (60 days 5/6/16) [02/10/16 @ 10:00 AM]
Action: Approved 7-0

Note: Commissioner DeRubeis noted that Mr. Fishman has been on the Commission for 10-12 years and has provided excellent service. Mr. Fishman also sits on the Community Preservation Commission as the Recreation representative. He recommends re-appointment.

A Committee member asked if there might be some benefit for more turn over on the Commission to bring in some fresh perspective. Commissioner DeRubeis explained that anyone who is interested can apply through the Mayor's office and there has been some turn over in the last couple of years. New ideas are very welcome but the institutional knowledge and memory is extremely valuable as well. Projects can go out over many years so keeping continuity is valuable. Special interest groups work with the Commission so there are other opportunities to get involved as well.

The Committee voted to approve Mr. Fishman's re-appointment 7-0.

#31-15 Proposing an ordinance to limit leaf blower use

PROGRAMS & SERVICES COMMITTEE proposing an ordinance to limit the use of leafblowers. [01/26/15 @ 2:20 PM]

Action: **Held 7-0**

#31-15(2) Amend Noise Ordinance restrictions for yard maintenance equipment

THE PROGRAMS & SERVICES COMMITTEE requesting to amend *Chapter 20-13, Noise Control*, relative to time restrictions on the use of yard, garden or grounds maintenance equipment. [03/19/15 @ 12:14 PM]

Action: **Held 7-0**

Note: Both leaf blower items were discussed together. Councilor Rice explained that Programs & Services held a meeting two days ago with many of the City Councilors in attendance. The goal was to garner feedback and suggestions and to answer any questions on the current draft leaf blower ordinance.

Enforcement

The question of enforcement was a recurring theme in the discussion and the Committee would like to have the Police Chief join the March 23rd meeting. Some Councilors had felt that the new leadership might offer stricter enforcement of the existing noise ordinance which might eliminate the need for amending the ordinance. The draft proposal does make enforcement easier, however, in that police or ISD simply need to look at a leaf blowers' manufacturer's label which states the decibel level. If it does not state 65 or lower then there is a violation which makes enforcement simple. No decibel meters needed.

A Committee member also mentioned that a habitual offender might then become unable to conduct business in the City. Ms. Lawlor, Assistant City Solicitor, explained that the City would not be authorized to do that. It could arguably be an infringement of civil relationship contracts. Besides civil ticketing, however, there is a criminal process that can be employed for habitual offenders which is a stronger form of enforcement.

Registration

The Committee also discussed the registration process that was proposed and perhaps David Olson, City Clerk, should come in as well to see how that might be implemented. It was also felt that perhaps the Inspectional Services Department might be the better department for registration. Both departments are quite busy. Some Committee members wondered if this was an area in which the City should be expending money, resources and staff. This could add a level of complexity that might better be avoided. It was still considered a good idea to distribute in as many ways possible a set of best practices and the ordinance itself.

Decibel Levels

A Committee member reiterated that other communities, as well as Newton chose 65dB as their standard based on OSHA and other safety and health requirements as a safe level. To raise that level would not be wise. The standard of decision should be not be what is necessary to move a pile of wet leaves, which is not an everyday situation. It should be based on what is safe and tolerable to a community. There are other ways to move wet leaves and the outside environment does not have to be perfect. These issues were handled in an adequate way before leaf blowers were widely used. The decibel level in the current ordinance should not be raised.

Other Communities

A Committee member mentioned that other communities have successfully implemented leaf blower bans of one kind or another and this is not a new concept. It would be helpful for the other Councilors to understand that. The compare and contrast chart that was used in earlier Committee meetings looks at Brookline, Cambridge and Arlington ordinances, and lists their various requirements. It would be helpful to add the proposed requirements for Newton so the Council can see these are not unreasonable or untested regulations.

Exemptions/Waivers

A Committee member hoped that the exemption or waiver process could be administrative, with some objective criteria attached to it. Rare circumstances should have to be met and then a permit of some kind could be issued. Some Committee members were concerned that the City would be granting itself waivers and that did not seem fair. Councilors at the previous meeting had that concern as well and felt that waivers or exemptions were not fair. A Committee member noted that they could exempt the leaf blowers from the waiver process.

The argument golf courses have given was that they need to maintain their greens to a certain standard and if they did not they would not be competitive with other clubs, and they need leaf blowers to do that. A Committee member argued that golf courses have been around much longer than leaf blowers and there must be other ways to handle that issue. Waivers are granted for hardship not convenience.

It was noted that Cambridge and Brookline both exempt the City/Town and golf courses. A Committee member originally felt that the Council would have been more amenable to a summer

ban if the exemptions were in place, however, that did not turn out to be the case. There was a strong reaction to exemptions and many Councilors did not want them.

Marie Lawlor, Assistant City Solicitor, explained that the current noise ordinance allows the Mayor's office to review and grant noise ordinance waivers based on hardship. In order to apply, the applicant must state what the hardship is; why they cannot comply with whatever part of the ordinance for which they are seeking a waiver; what equipment they will be using; and what steps they will be taking to mitigate any noise. If there is not enough information in the letter, the Mayor's office will ask for more. The Mayor's office also contacts the Ward Councilors for their feedback. Based on all that information, the Mayor may grant a waiver for what has been asked for, or put conditions on the request, or deny it altogether. Anyone may apply for a hardship waiver. This process happens quite often for construction projects

She also reminded the Committee that there is a provision in the current ordinance and in the draft which allows the Mayor to suspend all or part of the ordinance in an emergency situation such as a storm or other unusual weather or circumstances. A Committee member felt this could apply to years in which there is an early spring or a severe, late winter as well.

The Committee noted that since the Mayor notifies the Ward Councilors, they will be able to determine if the waiver process is being overused and if a new provision should be considered.

Number of Blowers per Lot

The Committee debated whether blowers should be limited based on lot size and what that lot size should be, if the machines have to be a certain number of feet apart, or just by allowing one blower on any lot for ease of enforcement. It might be difficult for ISD or Police to determine how large a lot is and how many blowers would be allowed. They won't be able to check an assessor's map to determine that. The other debate was whether louder noise for a shorter period of time was better than lower noise for a longer period of time. There needs to be a balance between what the homeowners want and what the landscapers want. Landscapers use the machines to get the work done more quickly because their time is valuable; however, for those who have to listen to that noise, their time is valuable as well.

Times of Restriction

There had been discussions in both Committee and in the larger meeting on March 7th that construction noise was allowed earlier in the morning and therefore leaf blowers should be allowed earlier. Several Committee members pointed out that it is a rare event to have construction going on in your neighborhood and is for a limited time, but leaf blowers are employed on a daily or at least weekly basis every year.

It was also pointed out that while leaf blowers may not be used until a later time, the start time for all other garden equipment does not change and can start earlier. These restrictions apply only to leaf blowers and do not deter landscapers from doing other work. Currently and historically, construction noise has been allowed at an earlier time than landscaping work. On Saturdays, in the

current ordinance, construction work may begin at 8:00am but landscaping work may not begin until 9:30am. The current ordinance does not allow any construction work on Sundays. The draft ordinance does not change that Saturday start time for leaf blowers/landscaping.

Seasonal Ban

There was some discussion about keeping the proposed summer dates or shortening that interval. A straw vote showed a majority in favor of shortening the summer ban to Memorial Day through Labor Day and keeping the proposed winter ban which runs from December 15 through March 1. A Councilor reminded the Committee that if a long winter, early spring, severe weather, etc. were to occur, the current exemption provision for emergencies in the ordinance would allow the dates to be moved to accommodate those events for everyone.

Education

A Committee member felt it was a good idea to telegraph the notion that the ban is in place during a time when leaf blowers are not really necessary to move leaves. It is a health issue and so that would be true for all, including residents, the City and large parcel owners, with no exemptions. There should also be wide education that the noise ordinance requires a 65dB machine and that the police department will enforce it. Best practices should be developed as well, but those would not be within the ordinance. All of this information should be made available in as many ways as possible to residents and contractors.

Other private organizations such as Newton Leaves could work to help educate the contractors in the area. A Committee member mentioned having Faith Michaels in on how that might work. This would not involve the City, but would be a private arrangement.

Effective Date

The Committee felt the ordinance should not take effect January 1, 2017

Conclusions

It seemed that keeping the ordinance as simple as possible was the way to provide compromise and address the concerns that were expressed by the Councilors at the meeting on March 7th.

This would include:

- Changing the seasonal ban to Memorial Day through Labor Day for everyone including residents, the City and large parcel owners; and maintain the proposed winter ban from December 15 through March 1; there would be no exemptions
- Maintaining the proposed times and days of operation during non-ban intervals;
- Maintaining the current level of 65db and simplifying the enforcement of the ordinance through manufacturers labeling of dB levels thereby eliminating the need for the decibel meter as a tool of enforcement;
- Maintaining the one blower per 10,000 square feet provision;
- Removing the proposed registration process;
- Making no changes to the current noise ordinance waiver provision and emergency waiver provision; and

- Providing an effective date of January 1, 2017

Follow Up

The Committee would like the Police Chief and the Commissioner of Parks & Recreation to attend the next meeting.

Respectfully Submitted,

John B. Rice, Chair