



TOWN OF PALM BEACH

Town Clerk's Office

REPORT OF THE ORDINANCES, RULES AND STANDARDS COMMITTEE MEETING HELD ON OCTOBER 5, 2021

I. CALL TO ORDER AND ROLL CALL

The Ordinances, Rules and Standards Committee Meeting was called to order on Tuesday, October 5, 2021 at 9:30 a.m. virtually via Zoom. On roll call, all committee members were found to be present.

II. PLEDGE OF ALLEGIANCE

Chair Araskog led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Motion was made by Committee Member Cooney and seconded by Chair Araskog to approve the Agenda. On roll call, the Motion passed unanimously.

IV. COMMUNICATIONS FROM CITIZENS

V. REGULAR AGENDA

A. Old Business

1. Review Chapter 42 of the Town Code – Lawn Maintenance, Relative to Hours, Equipment and Noise
Jay Boodheshwar, Deputy Town Manager

Jay Boodheshwar, Deputy Town Manager referred to the memo in the agenda backup advising that this item was referred to ORS for study to determine if there were any potential modifications to the Code which would need discussion by the Town Council. He stated that Ordinance No. 03-2018, which was adopted by the Town Council in 2018, was the most current change made and that the ordinance not only related to landscape maintenance, but also construction hours and construction seasons. He also referred to the Code Enforcement brochure (cheat sheet) that is a good

reference for landscape companies as it lists the relevant sections of the Code regarding lawn maintenance as well as right-of-way regulations.

Mr. Boodheshwar showed a Lawn (Landscape) Maintenance Summary of Current Regulations. This document listed the following:

PEAK SEASON (Monday preceding Thanksgiving through April 30)

- Landscaping permitted Monday – Friday from 8:00am – 5:00pm, but leaf blower use not permitted from 8:00am – 9:00 am (Sec. 42-199)
- No landscaping permitted on Saturdays, Sundays or legal holidays, including the Friday after Thanksgiving (Sec. 42-199)

OFF PEAK SEASON (May 1 through the Monday preceding Thanksgiving)

- Landscaping permitted Monday – Friday from 8:00am – 6:00pm (Sec. 42-199)
- Quiet landscaping, without leaf blower use, permitted Saturday from 9:00am – 5:00pm (Sec. 42-199)
- No landscaping permitted on Sundays or legal holidays (Sec. 42-199)

YEAR ROUND

- Gasoline powered leaf blowers prohibited on any property which is less than one acres in size (Sec. 42-197)
- Leaf blowers shall not exceed a decibel level of 65dBA as measured at 50 ft. from the point of operation (Sec. 42-230)
- It is unlawful to blow, sweep or rake yard trash or clippings into a public street or storm drains (Sec. 42-230)
- There shall be no commencement of large scale landscape installations at any time on Saturdays (Sec. 42-230)
- Residents performing their own lawn maintenance are permitted to do so after 9:00 a.m. on Saturdays, Sundays or legal holidays, including the Friday immediately after Thanksgiving, with the exception of leaf blower use (Sec. 42-230)

**CHANGES TO SEC. 42-199 VIA ORDINANCE NO. 26-2021
SCHEDULED FOR FIRST READING AT OCTOBER 12 COUNCIL
MEETING**

- No landscaping permitted on Saturdays, Sundays or legal holidays, including the Friday after Thanksgiving (year-round)
- No arrival of landscaping crew at work sites until 7:30 am (year-round)
- No use of leaf blowers from 8:00 am – 9:00 am (year-round)

Chair Araskog thanked Deputy Town Manager Jay Boodheshwar and everyone else for the comprehensive job they did to bring this information to the Committee. She referred to the backup regarding the noise and this ordinance in regard to the Code Enforcement brochure and inquired if the proposed regulations would “mirror” off season from 9 am – 6 p.m. the regulation on the Code Enforcement brochure. Mr. Boodheshwar stated that only quiet work would be allowed Monday to Friday, 8 am to 9 am during the peak season and there will be no changes to that regulation. With the committee’s approval, the change that will be made will be during the off-peak season. He suggested that the brochure be revised to show peak and off-peak seasons and define those dates. He explained that the changes would be that landscaping would not be allowed on Saturdays and prohibits leaf blowers from 8 am to 9 am on weekdays.

Chair Araskog stated that there could be confusion for the landscapers when looking at the code and specifically Sec. 42-230 (page 10 of the backup) where leaf blowers are described as heavy equipment, but nothing else is included as heavy equipment, and in Sec. 42-119 (b) (page 8 of the backup) that limits noise tending to disturb people in the vicinity thereof and then on page 9, where it states that no heavy equipment or other construction related noise is permitted before 9 a.m. It is her opinion that Section 42-230 should include lawn maintenance equipment that is not quiet in nature. Chair Araskog stated that her problem with the verbiage is that landscapers probably think that only leaf blowers are prohibited before 9 am during the week and on Saturdays in the off-season.

Deputy Town Manager referred to the section of the code that defines what noisy equipment is and stated that only leaf blowers were added. He advised that other equipment could be added to that section relative to what noisy equipment is if that was desired.

Discussion ensued regarding noise tending to disturb the public vs. equipment that tends to disturb others. Town Attorney John Randolph stated that we have always interpreted this section to only include leaf blowers, so it is not contradictory. He stated that we could always add other lawn maintenance equipment to the list. He thought we needed to hear from landscapers and others in regard to adding other equipment to that section.

Chair Araskog stated that would be her preference as she and others are receiving call after call about noisy lawn maintenance equipment. She stated that she was glad that Jay clarified that in season no landscape work was allowed on Saturdays, because there has been horrible landscape noise on Saturday in season that should not be taking place.

Member Cooney stated that Chair Araskog raised an important point because noise is noise and potentially a mower or hedge trimmer could make as much noise as a leaf blower. He stated that back when the ordinance was passed, we were focused on leaf blowers, which was good, but maybe we missed out on some others. He also agreed with Attorney Randolph on hearing from the landscaper community on how this would impact their ability to care of the homeowners' properties. He also suggested that it would be important to see data if there is such a thing on the decimal readings of noise from 50 feet away of such equipment versus leaf blowers.

Chair Araskog agreed that hearing from the landscape community is important, but she would like to limit all noisy equipment from 8-9 a.m. during the week. She also raised the issue of 50 feet being inside a home or even in the backyard on smaller streets and the noise could be heard inside a home from even electric leaf blowers. She favored perhaps changing the 50 feet measurement for smaller streets. She also agreed with what Member Cooney discussed at the last meeting in regard to banning all gas-powered leaf blowers.

Discussion ensued regarding (5) in the code that has language that does not allow "any other class of machinery or appliance that in its operation would render the enjoyment of property within the Town less agreeable than if such appliance or machinery were not operated." Chair Araskog stated that her interpretation of this section is that it does not limit the landscape equipment prohibition to leaf blowers. Deputy Town Manager Boodheshwar stated that this type of language is very hard to enforce because of the subjectivity. He stated though that the intent of (5) is to give them enforcement opportunities. Mr. Randolph stated that this is the intent so if it is excessive, code can use (5) and allows flexibility to allow landscapers to do their work if it does not bother the neighbors. Number (5) can be used at any time. It was agreed that this includes all landscape machinery or equipment if it is taking the enjoyment of one's property away. Chair Araskog pointed to this as the contradiction she earlier discussed because it is not just leaf blowers that can be stopped under (5).

Deputy Town Manager Boodheshwar suggested a conclusion to the discussion on what should be prohibited during quiet times. He stated that it is not necessarily just the list of equipment or changing the code to list all the equipment we can think of. He stated that it is important to make certain that staff is aware they can enforce other types of equipment that are not listed (in that section) that are machinery that could cause disruption to the neighbors, so that when a resident calls in there would be more of a reactive approach. He stated that this list was not meant to be a catch all.

Ben Alma, Civilian Services Manager, clarified issues regarding complaints. He explained that since the passing of the ordinance that code

has been using this part of the code on Saturdays and holidays. If noise can be heard from the street or sidewalk, we tell them it is too loud. Chair Araskog explained the frustration of residents who call in but by the time code arrives the noise is quieter, or warnings are given and few tickets. Mr. Alma explained the enforcement process regarding warnings and citations. The first-time offense is a warning to the contractor not the homeowner and the second is a citation. There is a documentation of each warning that stays on record for ten years, so code knows when a past warning has been given.

Member Cooney agreed with giving code enforcement discretion but agreed with Chair Araskog that the language in (5) could be confusing and lead to inconsistencies. Both agreed it gives code enforcement the discretion but questioned whether it would be better to have more clarification and listing of equipment to be consistent.

Chair Araskog stated that there will not be a huge change to the regulations, but that public education will be extremely important. She suggested getting letters out to homeowners as some were not on the Town's alert system. Discussion ensued about making certain staff and residents are aware of (5) to include not just leaf blowers, but all noisy equipment and that it be included in the code enforcement brochure.

Deputy Town Manager Boodheshwar explained that nothing was needed for landscaping for peak season but that we just need to do some education and make certain people understand that quiet hour period and the rules. He explained that for the summer season it eliminates Saturday landscape work, which is a substantial change for the landscape community, unless the Council decides to carve out an exception for Landscape work. He added no leaf blowers in the first hour during the week from 8 am – 9 am. He discussed the prohibition on all gas-powered leaf blowers and the history involved in that prohibition passing. He added that the technology has evolved since the last discussion.

Chair Araskog stated that all noisy equipment listed under lawn maintenance equipment should be included in the quiet work hours. Member Cooney questioned how could work be done at 8 am without equipment. He stated it was a policy decision. Chair Araskog discussed the many things that landscapers at her house do that are not noisy and asked that be added. Member Cooney agreed to recommend to the Council that all noisy equipment not be allowed.

After lengthy discussion, it was the consensus of the committee to propose to the Town Council that during the 8-9 AM quiet hour, there be a prohibition on the use of any equipment listed in Sec. 42-30(c) Lawn maintenance equipment that is inclusive of leaf blowers and other

equipment, not just leaf blowers, prohibit the use of gas-powered leaf blowers and no arrival on site before 7:30 AM.

2. Review Potential Limitations on Height of Vegetation Adjacent to Neighboring Structures

Wayne Bergman, Director of Planning, Zoning and Building

Wayne Bergman, Director of Planning, Zoning and Building gave an overview of this item. He stated that this was really about the minimum separation distance between neighboring buildings and newly installed landscape along the perimeter of properties. Last year's review by ARCOM and the Town Council of a specific property on Seaview Avenue and the neighboring property to the rear, showed that new landscaping directly next to neighboring buildings can be a problem. The vegetation, which includes, trees, palms and hedges can be a pathway for rodents, mainly rats, and iguanas to access roofs and eaves of buildings.

He stated that there should be a maximum landscape height and a separation distance between the newly installed plants in the neighboring buildings. These should be included in Chapter 66, which is the Natural Resource Protection in the section for Vegetation. At the last meeting, a possible 12 ft. separation distance between the building and newly installed vegetation was suggested. This height seemed to be too much and therefore was reduced to 6 ft. The final approved plans for the Seaview Avenue property with the actual distance that was agreed to by the Town Council which was 5 ft. diagonal measurement and a six-foot vertical measurement to the landscape to be installed. Mr. Bergman gave an overview of the changes made to the draft Ordinance for chapter 66 and also gave a presentation regarding the proposed Landscape Ordinance. By illustrations, he showed the difference between the landscape height that met the 6ft. requirement vs. landscape (12ft.) that conflicts with the proposed Ordinance.

Steven Greenwald, 128 Seaspray Avenue spoke in support of the proposed Ordinance.

Chair Araskog stated that her concerns were the six ft. height – how it would affect smaller properties that are not on the property line regarding privacy and the growth of palm trees that will get over six feet. She wanted to explore all the unintended consequences that will occur if this is passed.

Member Cooney expressed his concerns regarding the privacy issue.

Attorney Randolph suggested limiting this issue to certain areas of Town as it doesn't seem to be a Town-wide problem and suggested trying to have individual property owners handle it between themselves rather than having a general ordinance in the Town. He mentioned that the property owners

having this problem are the non-conforming properties which are close to the property line. The newer properties that are being constructed will comply with the new setbacks.

In response to Member Cooney, Attorney Randolph suggested that an Ordinance would have to take into account the specific properties where there are non-conforming structures that are within five feet of the property line and it would have to be more limited than what is being discussed at this time.

Director Bergman suggested limiting it to non-conforming neighboring buildings and to have the prohibition unless the neighbors enter into a written agreement. Chair Araskog expressed her disagreement with those ideas as most of the properties are on non-conforming lots and she thought it would be difficult to have neighbors entering into a written agreement. She suggested going back to the Town Council for more direction.

Mr. Boodheshwar reminded the Committee that this report will be on the Town Council agenda for November's meeting and suggested that Director Bergman make his presentation at that time.

It was the consensus of the Committee to place this matter on the November Town Council meeting as an agenda item to get direction from the Town Council.

B. New Business

1. Review How Deviations from Approved ARCOM and LPC Plans are Handled

Wayne Bergman, Director of Planning, Zoning and Building

Director Bergman gave an overview of how deviations from ARCOM and LPC approved projects are handled by the PZB department. He referred to the ARCOM Project Designation Manual and summarized the different levels of project approvals as follows:

1. Minor design changes to Commission-approved projects can be reviewed and approved at the staff level.
2. Substantial changes (or multiple changes) to Commission-approved projects require review by the approving Commission.
3. Certain changes to Commission-approved landscape, hardscape and exterior lighting, visible from the public right of way, must be considered by the Commission.
4. Any more than three staff approval applications in a six-month period will require review by the approving Commission.

He explained that by the time the plans go before ARCOM or LPC, it's still not 100% as the owners are still making decisions and sometimes the contractor have not yet been selected. There are always changes that seem to happen between the Commission-approved plans and the building permit plans which creates frustration. Noticeable for about the last year and a half is that the Town inspectors inspect a building during construction and will follow the plan. If a private inspection firm is being used they don't seem to follow the plan and at final inspection, deviations are discovered and these have to be referred back to ARCOM or LPC. After speaking with staff, he hopes to have more inspection time so that audits can be carried out of the work done by the private providers.

Chair Araskog spoke regarding past staff approvals of projects that were modified without approval. She suggested that all modifications should return to ARCOM for approval. Director Bergman explained that the State had placed a cap on the number of audits of the private providers that could be carried out. Recently, the cap has been modified so we can now get back to continuing the audits. Chair Araskog suggested notifying the private providers of the Town's requirements and the plans they need to follow. Director Bergman informed her that a new program is being created and he will be setting up a virtual meeting with all the registered private providers to point out the issues and assign the Town inspectors to do weekly audit inspections.

Director Bergman agreed with Chair Araskog with sending to the private providers some new inspection steps, which would cover the foundation, exterior shell and roof height to make sure all of these benchmarks are being audited and checked by the Town staff in addition to the private providers. Member Cooney expressed his agreement with the new process.

Attorney Randolph responded to Chair Araskog who asked if the Code should be amended to include the change that when a landscaping plan is approved, the homeowner is bound to that plan. He stated that he can look at whether it was wise to amend the ordinance.

2. Review of Chapter 42 of the Town Code, Article V – Noise
Jay Boodheshwar, Deputy Town Manager

Mr. Boodheshwar gave an overview of Chapter 42 relating to Noise.

Chair Araskog spoke regarding nuisance noise and gave a brief history of complaints between neighbors. She questioned whether the Ordinance was effective in giving the residents the quiet enjoyment of their property, especially in the night and early morning hours. She spoke about the different noise levels for certain activities.

Mr. Boodheshwar stated that the Code is pretty clear regarding noise. Basically, there are three types of noise that are prohibited - any loud or raucous noise is prohibited; any noise that tends to annoy the community or injure the health of the citizens in general or any noise that annoys, disturbs, endangers the comfort repose health, peace or safety of any considerable number of persons. A considerable number of persons, for this section, shall mean three or more unrelated persons in a separate household. He explained that the number of unrelated persons is a critical issue which was meant to provide guidance to the Town staff in understanding that this isn't limited to one person's hypersensitivity. He requested that the Committee speak on any issues of the Code they would like to focus on.

Member Cooney requested clarification on prohibited noise that is within the allowable decibel level but is causing a nuisance to three unrelated persons in separate households. Mr. Boodheshwar responded that he understood that it does not matter whether it is in the decibel level or not as long as it is disturbing three or more unrelated persons in separate households. Ben Alma, Civilian Services Manager, explained the enforcement process and confirmed that the decibel level would be a moot point if three or more persons make a complaint.

Discussion ensued with Manager Alma explaining the enforcement process and how the decibel levels are read.

After further discussion, including number of complaints, decibel levels, types of equipment, vehicular/non-vehicular noise, distance of noise measurement, and time of day noise is prohibited, the consensus of the committee was to move the prohibition from 7 am to 9:00 AM for Chapter 42-197 nos. (2) and (7) to be consistent with the construction ordinance and to compare the decibel levels with other communities that have adopted the 100% electric blower requirement. Draft language for the revised Ordinance and the findings regarding the communities that have adopted the 100% electric leaf blowers will be brought to the next ORS meeting.

VI. ANY OTHER MATTERS

The next ORS Committee meeting is scheduled for Monday, November 8, 2021 at 9:30 a.m.

VII. ADJOURNMENT

Motion was made by Member Cooney and seconded by Chair Araskog to adjourn the Ordinances, Rules and Standards Committee Meeting of Tuesday, October 5, 2021 at 12:15 p.m.

APPROVED:

Julie Araskog, Chair

ATTEST:

Queenester Nieves, CMC, Town Clerk

Date