

Supplemental Submission to the Record
of the Committee of the Whole
regarding the
Leaf Blower Regulation Amendment Act of 2017 (Bill 22-234)

By
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This is a submission for the Record of the Leaf Blower Regulation Amendment Act of 2017 that supplements my testimony of July 2, 2018 before the Committee of the Whole on this legislation. While I testified on behalf of ANC 3D at the hearing, these supplemental comments are being submitted in my private capacity as a citizen of the District of Columbia and a member of Quiet Clean DC.

During my career at the U.S. Environmental Protection Agency (from which I am now retired), I served for four years as the Director of the Federal Noise Control Program which published the still definitive document on acceptable levels of noise and wrote standards to control noise from equipment, such as construction equipment and motorcycles. I also served as two years as Acting Administrator of Air and Radiation, directing the national air pollution of EPA. I therefore have a strong professional interest in the noise and other emissions of gasoline-powered leaf blowers.

I would like to address at greater length than I did during the hearing the oral testimony presented by Mr. Robert Mann, Director of State and Local Government Relations of the National Association of Landscape Professionals and Mr. Daniel Mustico, Vice-President of Governmental and Market Affairs at the Outdoor Power Equipment Institute, Inc. Both of these witnesses opposed the subject legislation but for reasons that I believe are not sound. I also want to address DCRA Director Bolling's concern regarding the enforceability of this bill.

Are best practices by lawn care providers sufficient to solve the problem of leaf blower noise?

Mr. Mann suggested to the Committee that an adequate substitute for the subject bill would be his Association's efforts to try to persuade its members to sign a courtesy pledge that they would follow best practices in the industry. My response is that even if all of landscape professionals operating in the District of Columbia were to take this pledge (and many of them presumably are not members of Mr. Mann's association), this would not begin to address the noise problem that is addressed in the bill because the gas-powered blowers they are using are inherently noisy. It is also unlikely that his members will voluntarily switch to battery-powered equipment because they are bombarded with marketing pitches from the equipment manufacturers that the loudest blowers with the hurricane force stream of air are the best buy for these companies. This is similar to the way Harley Davidson marketed their very loud motorcycles before those machines were subjected to Federal noise regulation.

Of course, Mr. Mann's association has no control over the lawn maintenance companies that operate in the District, and therefore cannot promise that even his Association's efforts at promoting courteous behavior on the part of these companies will have any practical effect within the District.

Mr. Mann argues for a middle ground that allows his members to get their work done and still deal with the noise. I believe the subject bill achieves this middle ground. Mr. Mann's members have access to advanced battery-powered machinery that is dramatically and inherently quieter than gas leaf blowers. As landscape company owners testified at the hearing (Ms. Sainburg and Mr. Kline), and an additional

submission to the Committee from EcoQuiet Lawn Care in Massachusetts underscores, the newest battery-powered equipment works well and provides a much quieter experience for the operator and neighbors than the gas-powered blowers. In short, the technology had advanced quickly over the past several years, and Mr. Mann's members need to catch up with what is currently available in the marketplace. They owe it to their customers, their workers, and the neighbors of their customers to adopt a new motto of "landscape companies should be seen, not heard."

Mr. Mustico of OPEI also argued that the "best practices" videos, one of which he showed during the hearing, were the answer to noise problems from gas-powered leaf blowers in the District. These videos contain the same arguments that OPEI has been made against any restriction on its products for a decade or more. In addition, his association's members only develop and sell the equipment; they have no power over the persons/companies that purchase their equipment. His Association cannot even require purchasers of their equipment to watch the videos that he recommends.

It is interesting that Mr. Mustico's video, which he played for the hearing, makes the statement that it is the position of his Association that landscape professionals should "use reduced noise leaf blowers in sensitive areas." The accompanying video shows a residential setting while this OPEI policy is being stated. It would appear, therefore, that the only real debate between the supporters of this legislation and the Outdoor Power Equipment Institute is a) what is a "sensitive area", and b) what constitutes a "reduced noise leaf blower". I would posit that the urban neighborhoods of the District of Columbia constitute a "sensitive area" where reduced noise leaf blowers should be used. I would also posit that the new research presented at the hearing shows that the so-called "quiet" gas-powered blower touted by OPEI is not quiet compared to its battery-operated counterparts even though they receive the same official rating according to the ANSI noise measurement procedure developed and promoted by OPEI. In short, Mr. Mustico's industry has researched and produced effective alternatives to the gas-powered leaf blower; they sell them, and they work well. These are the leaf blowers we need used in the District of Columbia.

Can the marketplace substitute for the provisions of this bill

Mr. Mustico argued that regulation is not necessary and that the marketplace should be allowed to work its will. Of course, marketplaces do provide societal benefits in many cases, and regulations are not necessary for those situations. However, 50 years of environmental progress in the United States has shown that the marketplace sometimes operates imperfectly where there are important factors that are outside of the reach of the marketplace—what the economists call "market externalities". In the case of leaf blowers, the actual purchaser of the equipment is the one who is influenced by the forces of the marketplace. However, the impacts on the workers and neighbors of the customers being served represent externalities that are not affected by the marketplace. If the landscape operator had to pay for the hearing loss of his workers or had to pay a penalty every time he disturbed a neighbor with his machines, then these externalities would be internalized and the marketplace would move the lawn care operator toward quieter machines. However, such is not the case, and regulations, such as the subject bill, are appropriate to bring internalize these considerations within the decision-making process. Under the subject bill, everyone's interests—the landscape professional, the employee, and customer, and the neighbors—are balanced appropriately.

Is it appropriate to phase out the entire class of gas-powered leaf blowers?

Mr. Mann also argued that the subject bill is deficient in that it treats all gas-powered blowers equally—by phasing all of them out—no matter their size or noise level. However, in the recently conducted scientific study introduced to the Council, Arup’s Mr. Chris Pollock’s testimony shows that the legislation is correct in its targeting of all gas-powered blowers regardless of the noise rating. Even the so-called “low noise” gas blower that is touted by the industry as suitable for use in “sensitive areas” is characterized by a low frequency rumble that travels long distances and penetrates windows of buildings. Even the two blowers rated at 65 decibels tested in the study—one gas and the other battery—showed dramatically different sound signatures—the gas-powered blower’s noise travelling long distances, and the battery-powered noise traveling short distances, simply because of the frequency distribution of two sound waves. All gas-powered blowers have the low frequency characteristic, which is the current culprit when it comes to disturbance of the neighborhood. The subject bill is one instance where defining a ban based on technology rather than on some performance characteristic (such as the decibel level) has a strong scientific basis and is therefore both necessary and appropriate.

Is the Lawn Care industry doing the right thing for their workers by opposing this bill?

Mr. Mann did not address in his testimony the issue of what obligation his members have for the health of their employees who use these machines. His industry uses gas-powered equipment that often measures greater than 100 decibels at the ear of the operator, placing the responsibility on the employees to use hearing protectors to protect their ears from permanent hearing loss. Commercial grade battery-powered blowers available today are generally quieter at the ear of the operator.

Hearing protectors are useful, but they do not work unless worn and are fitted correctly. In addition, many hearing protectors on the market are not capable of abating the noise of a 100+ decibel machine down to the required 85-decibel OSHA standard. This is very important because CDC has found that just two hours of exposure to 85-decibel noise can cause permanent hearing loss.

The Federal Occupational Safety and Health Administration (OSHA) has a policy with regard to use of hearing protectors and other personal protection equipment. Their policy is that employers must first use technological means (equipment changes) to meet OSHA standards (in this case, the 85 decibel standard) and may use personal protection equipment (e.g. hearing protectors) only if the technological means do not provide a safe environment for the workers. I read this policy as requiring landscape professionals to use the quieter equipment in order to help protect their workers.¹

This concern regarding the noise exposure of the workers from this excessively noisy machinery does not even address the air pollution exposure that workers receive from these gas-powered blowers as well. These blowers emit large quantities of air emissions potentially harmful to the workers—emissions that, of course, are not present with battery-powered blowers. Just to illustrate how polluting these gas-powered blowers are, the California Air Resources Board has determined that the air emissions from all gas-powered gardening equipment, including leaf blowers, in California will exceed the emissions of all of the cars in California by the year 2020.² In short, in my view, lawn care companies have both a

¹ Personal Protective Equipment, U.S. Department of Labor Occupational Safety and Health Administration OSHA 3151-12R 2004.

² <https://www.kqed.org/news/11310630/more-pollution-than-cars-gas-powered-gardening-equipment-poses-the-next-air-quality-threat>

legal and moral duty to protect their workers, and buying and using gas-powered leaf blowers is not consistent with that duty. Their failure to meet this duty raises a strong concern in my mind for their credibility in opposing this legislation.

Are current regulations sufficient to provide District residents relief?

Mr. Mann stated that regulations promulgated for air emissions by EPA were bringing about cleaner and quieter gas-powered leaf blowers. He presented no evidence that controls on air emissions have any engineering relationship to the reduction of the decibel level of these machines. In addition, the last EPA regulation of exhaust emissions from these machines was promulgated in 2000. The eighteen-year intervening period has certainly provided enough time for us to see any changes in noise reduction that would have resulted from these regulations. In short, current regulations in place do not appear to offer the promise of any future reduction in the noise being produced by these excessively noisy leaf blowers.

Are gas-powered leaf blowers necessary for large acreage?

Mr. Mann also indicated that he felt that gas-powered blowers were necessary in those cases where large acreage, such as the National Mall, needs to be cleared. However, this statement does not square with the fact that the Smithsonian forbids its contractors to use gas-powered lawn equipment on its property.

His statement also is not consistent with the experience of other communities. Battery-powered equipment has been proven as a viable alternative to gas-powered equipment for large-acreage properties with substantial areas of turf, hedges, and paved hardscape that require intensive daily maintenance involving mowing, blowing, hedging, and edging. All routine maintenance at the following properties is carried out with battery-powered equipment and manual tools. For example,

- Garfield Park, a 10-acre park, South Pasadena
- Arroyo Seco Golf Course, South Pasadena
- Torrance American Baseball Fields, Torrance CA
- Select U.S. Navy properties in the Washington DC area
- East Quogue Village Green and Town Hall, Southampton NY
- Malibu Country Mart, a 6-acre center of shopping, gardens, picnic areas, and playground in Malibu

Other communities are in the process of transitioning to all-battery-powered maintenance. For example:

- Ojai, CA,
- Sonoma, CA
- Los Angeles, CA
- Pasadena, CA
- Southampton, NY

In addition, many universities are in the process of switching away from gas-powered equipment to battery-powered equipment, including leaf blowers. For example:

- Harvard
- Yale
- Florida State
- NC State
- The University of Texas at Austin
- UCLA (Los Angeles, CA) has phased out all gas-powered leaf blowers.
- USC (Los Angeles, CA): Using battery-powered mowers, blowers, hedge trimmers for large areas of the campus.
- Tufts University (Medford, MA): Using battery-powered mowers, blowers, hedge trimmers for large areas of the campus.
- Cal State Northridge (Northridge, CA): Phased out all two-stroke line trimmer and blowers, and using large battery-powered mowers for turf.
- Cal State Los Angeles (Los Angeles, CA): Using battery-powered mowers, blowers, hedge trimmers for large areas of the campus.
- Santa Monica Community College: Using battery-powered mowers, blowers, hedge trimmers for large areas of the campus.

Battery-powered leaf blowers continue to become more and more effective as manufacturers find even better batteries and designs.

Is it necessary to enforce noise levels by means of measurement of low-frequency signatures of blowers?

Chairman Mendelson raised the question during the hearing about whether it would be possible/necessary to enforce a ban on gas-powered leaf blowers by measuring the low frequency sound output of these machines. It was clear from the testimony that such an enforcement program would be fraught with many of the same complications as the enforcement of the current DC ordinance based on the dB(A) scale. However, the Arup study presented by Mr. Chris Pollock at the hearing shows that basing enforcement on the measurement of frequencies is unnecessary because these low frequencies are a unique characteristic of all these gas-powered blowers and is NOT a characteristic of battery-powered leaf blowers. It is easy for even laymen to distinguish a gas-powered from a battery-powered leaf blower. No meter or measuring device is necessary. If there is any doubt a photo can be taken and examined by someone more expert in the identification of this equipment.

Would this bill be a hardship on lawn care companies?

Both Mr. Mann and Mr. Mustico implied that the subject bill would be a hardship on lawn care companies. I do not see this possibility. The bill has a 3-year phase-in period during which the equipment can be shifted over to battery-powered equipment. During that period, much of the existing gas-powered equipment will have worn out anyway because the equipment in continuous use in commercial operations does not last very long, and this process has been accelerated by the presence of ethanol in our current gasoline supplies. The cost of the replacement equipment is more expensive up front but this cost is offset by avoided fuel costs and less maintenance. Current operators testified at

the hearing that they are successful in their businesses while using this battery-powered equipment and that their workers prefer it. In addition, here in the District, it appears that most of the lawn care companies are based in Maryland and Virginia, not in the District. This means that as long as those two states choose to stay with the status quo, these companies do not need to turn over their entire equipment inventory. Instead, they can use battery-powered leaf blowers in the District and their gas-powered equipment in Maryland and Virginia, thereby reducing any perceived expense.

I understand that at least 140 companies nationwide have chosen to work with battery-powered blowers. Can 140 companies all be wrong in making this business decision? I would suggest that Mr. Mann and Mr. Mustico's worries are apparently based on some of the early battery-powered blowers. Today's commercial grade blowers are more powerful. In addition, of course, Mr. Mustico is not in a position to favor one type of equipment (battery-powered blowers) over another type manufactured by his members.

Is this bill enforceable?

Director Bolling of DCRA, expressed concern at the hearing about enforcement of the subject bill. This is because, I believe, she had in her mind the model of the current legislation that DCRA finds unenforceable because of the need to have an inspector on site with a noise meter in time to measure the violation. There are models that are more effective available to the District for enforcing this provision.

In creating its own enforcement procedures, Washington DC would have the benefit of best practices followed and lessons learned from other communities that have already enacted and enforced gas-powered leaf blower bans.

Understandably, there is no one-size-fits-all solution to enforcement. Many local elements come into play that suggest varying enforcement procedures. For example, communities differ in population size, housing and commercial density, vegetation, nature of the trees and grasses, climate and seasons, city government structures and budgets. Of course, Washington DC would have its own locally based conditions, needs, and assets to consider.

Despite the differences, there are many common elements of enforcement procedures from which to learn. For example, recognizing that voluntary compliance is key to virtually all environmental regulation, many communities begin with an effort to educate and persuade the public, the lawn care companies, and other lawn care providers. Following education and information campaigns, many communities follow similar steps for reporting and enforcing the law.

Here is a summary of the successful strategies employed:

Announcing the bill

Informing and Educating the public. Many towns begin with public information campaigns, including a variety of media: PSAs and programs on radio and/or TV, commentaries and articles in local papers, newsletters, individual house-to-house leafletting. They also take advantage of spreading the word in public places and at celebratory events, such as posting notices at playgrounds, parks, recreations centers, public libraries; leafletting at parades, community activities, Earth Day celebrations, local sports or recreation events, etc.

A plan for reporting violations.

Who can report and how? Towns develop plans with a variety of elements, including citizen reporting of violations to designated recipients (police or a specified department) via 911, 311-telephone reporting, internet reporting via online forms, direct email, texting, and online apps. All of these include instructions for information to provide about the when, where, and who of the violation. Some include a way to include camera-photos as evidence of the violation. None of these procedures precludes individuals from approaching violators (who are often neighbors) in person, if they wish to.

A plan for responding to reports of violations.

Who responds to reports of violations? Towns engage a variety of offices or departments as the responder to violations. They include the police department and others of varying names and oversight, including the Department of Planning and Community Environment, the Office of Sustainability and Environment, the Department of Regulatory affairs, the designated official or Department of Code Enforcement, etc.

What happens following reports of violations? A strong model employs a series of one to three steps, which begin with warnings of the violation and conclude with issuing citations. Warnings may involve door hangers, letters to the location of violation (homeowner or business) or to the lawn service company undertaking the work. Warnings provide information about the bill and the violation that has been reported, and sometimes a request for acknowledgment of receipt of the warning, and information of expected next steps in case of future violations.

Who is held responsible and what are penalties? Towns hold the homeowner, commercial owner, and/or lawn care company responsible. Ultimate penalties are fines. These have provided revenue to the cities that can offset costs of implementing an enforcement system.

Case study, Santa Monica, CA, population 90,000

Santa Monica, California report on experience and history of enforcement of gas-powered lawn equipment ban.

Summary: Santa Monica CA banned the use of *all* leaf blowers in 2010. At that time, they also set in place a process for citizens to report violations of the leaf blower ban. Citizens can report a violation by email, phone, or smartphone app. There are about 13 code enforcement officers, who regularly patrol in designated geographical areas for violations of many different laws, including the leaf blower ban. These officers are responsible for following up on reports of violations. If they do not find the violator present, a leaflet is left telling the property owner to stop using leaf blowers. Upon a second violation, the officers issue an official warning or a citation. Homeowners who hire lawn care and/or lawn maintenance/gardening companies are held liable. (The companies are informed of the city ban when they receive their operating license.) In 2016, Santa Monica initiated 1118 cases, issuing 206 administrative citations. 68% of those citations were paid. The fine was \$500.

The Law (S.M.M.C. 4.08.270)

No person shall operate any leaf blower (gas, electric, or battery powered) within the City. A leaf blower is defined as any motorized tool (gas, electric, or battery powered) used to propel fallen leaves and debris for removal. Infractions will be punishable by substantial fines to property owners, property

and landscape management companies, individual operators, and/or water customers. (The enforcement has been amended to exclude individual operators from liability.)

What can Washington DC do? Washington DC has already implemented successful compliance programs. One start is to consider these successful programs as a model for enforcing the new bill.

DC already uses the 311 system to report violations of:

- 1) The District Bag Law
- 2) Drainage issues at construction sites, and
- 3) Engine idling

In addition, DCRA already administers a citizen reporting system for noise from private trash trucks that are violating the hour restrictions on trash collection. Citizen complaints of a violation can serve as a basis for a penalty, without the necessity of a city inspector's personally observing the violation. Companies are first warned, but if there are repeated complaints against the same company, penalties are assessed. If the company continues its violations, their license to operate in the city can be jeopardized.³ This seems an appropriate model for the enforcement of the leaf blower ban, based on citizen complaints/affidavits. Attached to this submission is a copy of the statute that authorizes this citizen complaint system and a copy of the affidavit form that citizens can fill out and submit in order to initiate an enforcement investigation by DCRA.

In short, DCRA is NOT enforcing the current leaf blower act. DCRA should welcome the new approach provided by the subject bill that incorporates an easy path to compliance based on the experiences of other communities, with the backup of enforcement and penalties for the few operators who refuse to comply.

I hope that these comments will be helpful to the Committee as it prepares this bill for passage by the Committee and then passage by the full Council.

³ Telephone conversation with DCRA staff on July 16, 2018.

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a process for members of the public to file complaints of trash collection noise violations with the Mayor.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Trash Collection Noise Violations Abatement Act of 2008”.

Sec. 2. (a) Any person may file a complaint of a trash collection noise violation with the Mayor.

(b) A complaint under subsection (a) of this section shall be submitted in written form prescribed by the Mayor and made available on the District of Columbia website. The complaint shall be submitted within one week of the alleged violation and shall be signed by an original complainant who shall attest to its accuracy, under penalty of perjury. The complaint shall include:

(1) The name of the individual or company alleged to have violated section 2806 of Title 20 of the District of Columbia Municipal Regulations;

(2) The location of the alleged violation;

(3) The date and time of the alleged violation; and

(4) Any additional identifying information about the trash truck or its driver.

(c) A District inspector need not witness a violation for a complaint to be valid.

(d) A complainant under subsection (a) of this section may appear and give testimony at any administrative hearing or administrative review of the complaint, or any other judicial or quasi-judicial action that may result from the complaint.

(e) If the Mayor deems that the complaint has merit, the Mayor shall file a Notice of Infraction pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.01 *et seq.*), and with the Office of Administrative Hearings.

(f) This section shall not apply to complaints relating to Department of Public Works trash trucks.

ENROLLED ORIGINAL

Sec. 3. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia



TRASH NOISE COMPLAINT FORM

The Department of Consumer and Regulatory Affairs' (DCRA) Regulatory Investigations Section investigates complaints from District residents who suspect private trash haulers are operating beyond the times allowable by Trash Collection Noise Law, DC Law 17 259.

Trash collection by private haulers is prohibited between the hours of 9:00 pm and 7:00 am in residential, special purpose, or waterfront zones, or within 300 feet of any of these zones. These rules apply to private trash collection companies only and do not apply to Department of Public Works vehicles.

NOTE: You must submit your complaint within 7 days of the alleged violation.

COMPLAINANT INFORMATION

Complainant's Name

Complainant's Address

Complainant's Phone Number

Complainant's Email

INCIDENT INFORMATION

Location of suspected noise violation (include all details such as street numbers, cross streets, etc.)

Date of suspected violation

Time of suspected noise violation (include exact time or range of time)

Color of trash vehicle including description of any striping or graphics with company name

License plate state and number (if possible)

Where did you view the vehicle from?

What activity did you observe?

Approximately how far away were you from the vehicle?

How many times has this suspected violation occurred in the past month?

Has the suspected violation always include the same vehicle? If not, explain.

I declare under penalty of perjury that the foregoing information is true and correct.

Signature

Date

SUBMIT YOUR COMPLAINT

MAIL - Print, sign and hand deliver to: DCRA Service Center, 1100 4th Street, SW, 2nd Floor, Washington, DC 20024

FAX - Print and sign completed form and fax to DCRA Investigations at (202) 442-9448.

EMAIL - Download the Trash Noise Complaint Form. Print and sign completed form. Scan and save signed form. Email to: trash.noise@dc.gov.

ONLINE - Complete and submit an [Online Trash Noise Complaint Form](#).

