

CITY NOISE ORDINANCE REGARDING LEAF BLOWERS

The City of Alexandria is permitted to amend its noise control ordinance either (1) to ban the use of all leaf blowers in the City, or (2) to continue to allow the use of electric leaf blowers but prohibit gas-powered leaf blowers.

The Honorable Elizabeth Bennett-Parker Member, Virginia House of Delegates

August 12, 2024

ISSUES PRESENTED

You inquire whether the City of Alexandria (“City”) is permitted to amend its noise control ordinances either (1) to repeal an exemption afforded power lawn and garden equipment — thereby incidentally banning the use of all leaf blowers in the City — or (2) to continue to allow the use of electric leaf blowers but prohibit gas-powered leaf blowers.¹

RESPONSE

It is my opinion that the City may amend its noise ordinances in either of the manners you describe.

APPLICABLE LAW AND DISCUSSION

The Commonwealth of Virginia follows the Dillon Rule of strict construction, which provides that a municipal corporation “can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incidental to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable.”² “[T]he implied power need not be absolutely indispensable, and it is sufficient if it is reasonably necessary to effectuate a power expressly granted.”³ Such power can be conferred by general law or special act.⁴

If there is “reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.”⁵ However, “where the state legislature grants a local government the power to do something but does not specifically direct the method of implementing that power, the choice made by the local government as to how to implement the conferred power will be upheld as long as the method selected is reasonable.”⁶ A method is “unreasonable if it is contrary to the legislative intent or inappropriate for the ends sought to be accomplished by the grant of the power.”⁷

No statute expressly authorizes a locality to regulate the use of leaf blowers.⁸ Nevertheless, the City's Charter grants the City the power “to compel . . . the elimination of unnecessary noise . . . and to compel the abatement or removal of any and all other nuisances whatsoever within the city.”⁹ Pursuant to this power, the City has adopted a series of ordinances that establish various noise regulations that include restrictions based on the nature of the noise, decibel levels, time of day, and location.¹⁰ Generally, it is unlawful to project noise beyond the boundaries of a property when that noise exceeds 55 decibels, when in residential areas, or 65 decibels, when in commercial areas.¹¹ You relate your understanding that both gas and electric leaf blowers typically generate noise exceeding these decibel limits, but that under what you dub an “exemption,” the use of “power lawn and garden equipment” — including both gas and electric leaf blowers — is permitted under the City's current ordinance (subject to time restrictions), notwithstanding the generally applicable decibel limitations.¹² You seek guidance regarding potential amendments to the City's noise ordinances that would affect the use of leaf blowers.

The City is clearly authorized to enact noise restrictions, and it has done so. Noise control ordinances “may be amended or repealed in the same manner . . . in which . . . ordinances are adopted.”¹³ In granting the City the power to regulate excessive noise, the General Assembly was silent as to its method of execution. Accordingly, the method the City uses to exercise its power will be upheld so long as it is reasonable.¹⁴ Any “doubt in the reasonableness of the method selected is resolved in favor of the locality.”¹⁵

As a general proposition, basing noise restrictions on decibel levels is a reasonable method for the City to adopt in seeking the “elimination of unnecessary noise.” No state law required the City to afford exceptions to leaf blowers or other specific equipment in the first instance; rather the City exercised its discretionary authority to permit the general

use of such equipment based on other policy considerations and preferences existing at the time. Subsequently amending the noise control ordinances to repeal the exemption of power lawn and garden equipment — necessarily banning all leaf blowers — because such equipment exceeds otherwise applicable, reasonable decibel limits is also within the City's discretionary authority under its Charter to regulate noise.¹⁶

It similarly follows that the City may amend its noise control ordinances to prohibit the use of gas-powered leaf blowers while continuing to allow the use of electric-powered leaf blowers. To the extent that gas-powered blowers emit greater decibels or pollutants than their electric counterparts, they present distinct policy considerations.¹⁷ The City is empowered not only to address noise concerns, but it is also more broadly authorized to “adopt ordinances . . . for the preservation of the safety, health, peace, good order, comfort, convenience, morals and welfare of its inhabitants.”¹⁸ In the absence of General Assembly action limiting the City's discretion to adopt and amend ordinances designed to eliminate unnecessary noise, it is reasonable for the City to create and limit noise-restriction exemptions with other policy goals in mind. Finding no contrary legislative intent and that such means are consistent with the overall ends of noise reduction, I conclude that this proposed amendment is a permitted exercise of the City's express Charter powers.

CONCLUSION

Accordingly, it is my opinion that the City of Alexandria has the power to repeal the noise control provision that exempts power and lawn equipment from otherwise applicable decibel limits, thus banning the use of leaf blowers in the City. It is my further opinion that the City may amend its noise control ordinances to distinguish between leaf blower types, allowing the use of electric-powered leaf blowers but prohibiting the use of gas-powered leaf blowers.¹⁹

FOOTNOTES

¹ The City's noise control ordinances, as currently in effect, are set forth in Title 11, Chapter 5 of The Code of the City of Alexandria, Virginia, 1981. I note that in addressing these issues, I adopt your framing of them as set forth in your request; because this Office traditionally does not interpret local ordinances, *see, e.g.*, 2004 Va. AG 92, 93, 2004 Op. Va. Att'y Gen. 92, 93, the Dillon-Rule analysis herein assumes the correctness of your understanding as to the application of the current ordinances and the practical effect of the described potential amendments.

² *City of Richmond v. Bd. of Supvrs.*, 199 Va. 679, 684 (1958) (quoting *Donable's Adm'r v. Town of Harrisonburg*, 104 Va. 533, 535 (1905) (Dillon, J.)). When a “local ordinance exceeds the scope of this authority, the ordinance is invalid.” *City of Chesapeake v. Gardner Enters.*, 253 Va. 243, 246 (1997).

³ *See* 75-76 Va. AG 62, 64, 1975-76 Op. Va. Att'y Gen. 62, 64 (quoting *Connelly v. Clark Cnty.*, 307 N.E.2d 128, 130 (Ill. App. Ct. 1973)).

⁴ *See Commonwealth v. Rivera*, 18 Va. App. 103, 107 (1994) (citing VA. CONST. art. VII, § 2); 81-82 Va. AG 461, 1981-82 Op. Va. Att'y Gen. 461, 461 (citing VA. CONST. art. VII, § 3).

⁵ *Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 578 (2019) (quoting *Bd. of Supvrs. v. Reed's Landing Corp.*, 250 Va. 397, 400 (1995)). The Virginia Supreme Court “recognize[s] the ‘reasonable selection of method’ rule, which permits local governing bodies to exercise discretionary authority when a statutory grant of power has been expressly made but is silent upon the mode or manner of its execution.” *Advanced Towing Co., LLC v. Fairfax Cnty. Bd. of Supvrs.*, 280 Va. 187, 193 (2010).

⁶ *City of Va. Beach v. Hay*, 258 Va. 217, 221 (1999).

⁷ *Id.* at 222 (holding that the City's decision of hiring assistant city attorneys by appointment of the city council to serve at the pleasure of the city attorney is a reasonable method of implementing the power to hire).

⁸ As you note, legislation granting localities explicit authority to ban gas-powered leaf blowers has been introduced multiple times in the past few years, including during the 2024 regular session of the General Assembly, but those measures have not been enacted. *See, e.g.*, S.B. 305, 2024 Reg. Sess. (Va. 2024). This legislative history is not dispositive of your inquiry. Although failed legislation may be considered in construing ambiguous statutes, *see Tabler v. Bd. of Supvrs.*, 221 Va. 200, 203 (1980), the rejection of a proposed amendment is not dispositive, for “several equally tenable inferences may be drawn from such [rejection], including the inference that the existing legislation already incorporated the offered change.” *United States v. Craft*, 535 U.S. 274, 287 (2002) (quoting *Central Bank of Denver, N.*

A. v. First Interstate Bank of Denver, N. A., 511 U.S. 164, 187 (1994)). Accordingly, I will not speculate as to the understanding of certain members of the General Assembly in proposing, or the intent of the body as a whole in rejecting, an amendment to the Code.

⁹ CHARTER FOR THE CITY OF ALEXANDRIA, VA., § 2.04(m). *See* VA. CODE ANN. § 15.2-1102 (2018) (providing a general grant of police powers to cities and towns within their boundaries); *see also* VA. CODE ANN. § 15.2-980 (Supp. 2023) (allowing a locality, by ordinance, to “adopt a uniform schedule of civil penalties for violations of that locality's noise ordinance”).

¹⁰ *See* CITY OF ALEXANDRIA, VA., Code §§ 11-5-1 through 11-5-16.

¹¹ *Id.* at § 11-5-5(a)(1)-(a)(3) (setting decibel limits for residential, commercial, industrial, and institutional use areas).

¹² *See id.* at § 11-5-2(32) (defining “power lawn and garden equipment” to include “snow and leaf blowers”); § 11-5-4(16) (prohibiting the use of power lawn and garden equipment only before 7:00 a.m. and after 9:00 p.m. Monday through Friday, and before 9:00 a.m. and after 9:00 p.m. on Saturdays, Sundays, and holidays).

¹³ Section 15.2-1427(D) (Supp. 2023).

¹⁴ *Hay*, 258 Va. at 221.

¹⁵ *Id.*

¹⁶ *See Advanced Towing Co., LLC*, 280 Va. at 193 (holding, in addressing local power to regulate the storage of towed vehicles, that “[w]ith respect to the territory within which vehicles are to be stored after being towed, the statutory grant of power to regulate towing is silent as to the manner of its execution. It follows that the localities may exercise reasonable discretion in prescribing, by ordinance, the territory within which towed vehicles shall be stored without contravening the Dillon Rule.”).

¹⁷ *See* Paul Hope, *Gas vs. Electric Leaf Blower: Which Is Better?*, CONSUMER REPORTS (May 16, 2023), <https://www.consumerreports.org/home-garden/leaf-blowers/gas-vs-electric-leaf-blower-which-is-better-a6168456021/>.^{*}

^{*} [Editor's Note: The website address(es) which appear in this case are set out as hyperlinks for your own convenience. Due to the passage of time, however, the hyperlink may no longer work and/or the content of the website may not accurately reflect the content which existed at the time this case was decided.]

¹⁸ CHARTER FOR THE CITY OF ALEXANDRIA, VA., § 2.04.

¹⁹ As determining “[w]hether a method chosen to implement an express or implied power is reasonable will depend upon the circumstances of each case[.]” H01, 258 Va. at 222, this Opinion is limited to the specific scenarios described in your request. Although not present here, I can envision circumstances where the City's implementation of its power to regulate noise could be deemed arbitrary or capricious or to otherwise “expand[] the power beyond rational limits necessary to promote the public interest,” rendering it unreasonable. *Id.* This Opinion also is limited to the legal conclusions stated herein; I offer no comment on the merits of any particular policy the City may chose to adopt.