

**DATE:** December 1, 2020

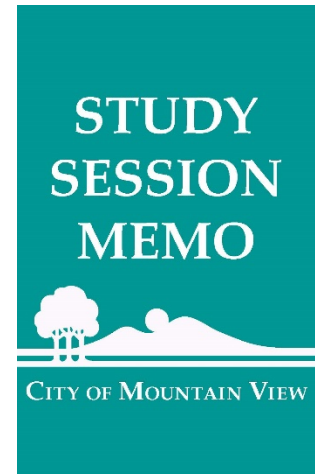
**TO:** Honorable Mayor and City Council

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**TITLE:** **Potential Ordinances to Address Health and Environmental Impacts Related to Smoking in Multi-Unit Residential Buildings and Operation of Gas-Powered Leaf Blowers**

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## **PURPOSE**

Seek Council direction on whether to pursue the following ordinances to address health and environmental impacts by:

1. Amending Article II of Chapter 21 (Miscellaneous Offenses and Smoking Regulations) of the Mountain View Municipal Code Relating to Regulation of Smoking in Certain Places to prohibit smoking in multi-unit residences.
2. Drafting an ordinance and developing a related incentive program to prohibit operation of gas-powered leaf blowers.

## **BACKGROUND**

Periodically, over time, the City has received requests from residents to prohibit smoking in multi-unit residential buildings and the use of gas-powered leaf blowers. The development and implementation of new policies to regulate these activities in the community have not been included in recent Major Goals Work Plans as staff capacity has been focused on other high-priority projects.

The COVID-19 pandemic has heightened health and environmental concerns about both exposure to secondhand smoke and emissions from gas-powered leaf blowers since poor air quality can impact respiratory health, which increases the risk from the virus. Many Mountain View residents now have increased exposure to secondhand smoke and leaf

blower emissions in their residences due to public health protocols that have resulted in large numbers of people working from home. At the same time, many children and youth are at home participating in distanced learning. In recent months, an increasing number of residents have contacted the City Council through e-mails and comments at Council meetings, expressing these concerns and requesting City action.

In response to these requests, on August 25, 2020, during the Council reports section of the agenda, Councilmembers asked staff to explore the possibility of developing an ordinance to address smoking in multi-unit residential buildings. On October 27, 2020, Council made a similar request related to a ban on gas-powered leaf blowers. To help inform Council's direction on whether to proceed, staff committed to bring these items to Council in a Study Session with an initial indication of the time frame and tradeoffs/impacts on other projects and programs if staff were to undertake this work. Since both items address community health and environmental concerns and would involve staff from the same department, they are being brought forward at the same time for Council's consideration.

### **Context for the Regulation of Smoking in Mountain View**

In 2012, the City Council passed an ordinance which prohibited smoking in any enclosed public space within Mountain View, including, but not limited to:

- All enclosed public places available to and customarily used by the general public and in all enclosed businesses patronized by the public.
- Places of employment.
- Semiprivate rooms of health facilities.
- Common areas in retirement facilities and nursing homes.
- Outdoor amphitheater seating areas, including both fixed and informal seating areas, with a view of the stage.
- Picnic areas.
- Dining areas.

This ordinance does not address smoking in multi-unit residential buildings.

## **Context for the Regulation of Leaf Blower Use in Mountain View**

Currently, there are no City regulations specific to the use of leaf blowers in Mountain View. In 2018, the Environmental Sustainability Task Force 2 (ESTF-2) recommended implementing a sustainable landscaping program in Mountain View (Recommendation W-12) which would include a leaf blower incentive or ban that is initially voluntary, leading to a mandatory ban in 2023. The Sustainability Action Plan 4 (SAP-4) contains a project (P3.2) to evaluate options for a City rebate or trade-in program to encourage adoption of electric landscaping equipment in the community. This is scheduled to be implemented in Fiscal Year 2021-22.

At the State level, on June 9, 2020, the California Air Resources Board (CARB) held a Small Off-Road Engines (SORE) Pre-Rulemaking Workshop, which presented possible changes to SORE regulations for later presentation to the CARB (the term SORE encompasses leaf blowers and other motorized landscaping equipment, such as lawn mowers, hedge trimmers, etc.). The proposed timeline for new regulations includes tightened emissions standards in 2023, adoption of zero-emission standards in 2025, and a requirement that all new sales of SORE be zero-emission in 2028. These regulations have not yet been adopted by the CARB and would only apply to new equipment.

## **DISCUSSION**

### **Smoking Prohibition in Multi-Unit Residential Buildings**

#### *Impacts of Secondhand Smoke*

More than 480,000 people die each year from smoking-related diseases, making tobacco use the nation's leading cause of preventable death.<sup>i</sup> The U.S. Surgeon General has concluded that there is no safe level of exposure to secondhand smoke, and the California Air Resources Board has classified secondhand smoke as a toxic air contaminant.<sup>ii</sup> Secondhand smoke is responsible for an estimated 41,000 heart disease-related and lung cancer deaths each year.<sup>iii</sup> According to the Centers for Disease Control, the only way to fully protect nonsmokers is to eliminate smoking in all homes, work sites, and public places.

The home is now the leading source of secondhand smoke exposure. Smoke travels through doorways, cracks in walls, electrical outlets, ventilation systems, and plumbing. Opening windows and using fans does not remove secondhand smoke, and heating, air conditioning, and ventilation systems cannot eliminate exposure.<sup>iv</sup> More than one-

quarter (29 percent) of Santa Clara County residents report smelling tobacco smoke drifting into their home from nearby apartments or from the outside.

Children, low-income tenants of public housing, and members of racial and ethnic minority groups are disproportionately exposed to secondhand smoke; smoke-free housing policies have shown the potential to reduce exposure in these populations.<sup>v</sup> Such policies can also protect residents from harmful “thirdhand smoke,” which is the residue from tobacco smoke that is absorbed by indoor surfaces and then emitted back into the air. Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and place household items in their mouths.<sup>vi</sup>

### *Fire Safety Impacts*

Smoking is also a documented cause of fires. Between 2012 and 2016, smoking was the leading cause of home fire deaths in the United States, with an estimated annual average of 18,100 (5 percent) reported home structure fires started by smoking materials. During this time frame, these incidents killed an average of 590 people, injured 1,130 people, and caused \$476 million in direct property damage per year. Overall, one of every 31 fires started by home smoking materials resulted in death.<sup>vii</sup>

### *Smoking Regulations in the Region*

Multiple County surveys show an increased demand for smoke-free housing. In a survey conducted by Santa Clara County in 2011-12, 96 percent of Santa Clara County apartment residents said they believe that smokers should not be allowed to smoke wherever they want; and 84 percent of those surveyed said that they would support a no-smoking policy at their multi-unit housing complex.<sup>viii</sup>

California law allows landlords to make their properties smoke-free but does not require smoke-free multi-unit housing (other than common areas where an employee enters). In Santa Clara County, the cities of Los Gatos, Palo Alto, Santa Clara, and Sunnyvale, as well as the unincorporated areas of Santa Clara County, require multi-unit housing to be smoke-free. Additionally, the Housing Authority of Santa Clara County prohibits smoking at all of its properties. In San Mateo County, Belmont, Brisbane, Burlingame, Foster City, Half Moon Bay, Redwood City, San Bruno, San Mateo, South San Francisco, and the unincorporated areas of San Mateo County require multi-unit housing to be smoke-free. Statewide, 63 local jurisdictions have adopted smoke-free multi-unit housing laws that are considered “strong” by the American Lung Association.<sup>ix</sup> Most of these laws require 100 percent of new and existing housing units to be smoke-free.

### *Multi-Unit Housing in Mountain View*

Approximately 50 percent of Mountain View housing units are multi-unit residences with three or more units, including both rental apartments and owner-occupied condominiums. The Rent Stabilization Program implements the Community Stabilization and Fair Rent Act (CSFRA), which covers all multi-unit rental properties with three or more units that were constructed prior to 1995. The Multi-Family Housing Inspection Program to promote fire and building code compliance also applies to buildings with three or more units. Based on information provided by the Santa Clara County Assessor's Office, Mountain View only has 36 two-unit rental properties.

### *Process and Timeline for Adopting an Ordinance Amendment*

Developing an amendment to Article II of Chapter 21 (Miscellaneous Offenses and Smoking Regulations) of the Mountain View Municipal Code would involve staff from multiple departments (Fire Department, Police Department, Community Development Department, City Attorney's Office, and City Manager's Office). It is estimated that the process would take five to six months. Following the adoption of the ordinance, an additional one to two months would be needed to reach out to residents, landlords, and property managers to inform them about the new regulations and support compliance. The steps for developing and adopting the ordinance amendment are summarized below.

- Review existing ordinances and the experience of other jurisdictions.
- Identify ordinance amendment scope and draft key elements.
- Determine the approach to and resource implications for enforcement.
- Seek feedback from residents, landlords, and property managers, potentially through mailers, surveys, and public forums.
- Incorporate public input, conduct legal review, and prepare an ordinance amendment for Council adoption.
- Following Council adoption, conduct public outreach regarding the new regulations.

If the Council directs staff to proceed with developing the ordinance amendment, staff anticipates being able to start the work in January 2021 and returning to Council for adoption by the end of the current fiscal year.

### *Tradeoffs and Implications*

Given the current heavy workloads of staff in the departments that would be involved in developing the ordinance amendment, there are implications for other programs and projects, including the following:

#### Fire Department:

- The Hazardous Materials and Fire Life Safety inspections conducted by staff working on the ordinance amendment would be delayed, and there may be facilities that are not inspected within the State-mandated time frames.
- Plan check review time might be impacted.
- Maintenance of the Fire and Environmental Protection Division's databases and related reporting may be delayed.

#### City Attorney's Office:

- City Attorney staff hours spent on legal review and ordinance drafting may redirect them from general duties, which includes providing litigation, transactional, and advisory legal services to City departments and officials.

#### Community Development Department/CSFRA:

- CSFRA staff would assist with community outreach efforts, which may impact time available for other outreach activities.

If the City Council directs staff to proceed with expansion of the smoking ordinance, the resource impacts associated with implementing and enforcing the ordinance will be analyzed during the ordinance development process and presented to Council with the proposed ordinance amendment. Given the City's small code enforcement team, there are capacity constraints that will need to be considered.

### Questions for City Council

1. Does the City Council want to direct staff to proceed with a revision to Article II of Chapter 21 of the Mountain View City Ordinance to prohibit smoking in multi-unit residences with three or more units, consistent with current practices in other City programs and regulations?
2. Does the City Council have any input on the ordinance revision process outlined in this Study Session memorandum?

### Ban on the Use of Gas-Powered Leaf Blowers

#### *Impacts of Small Off-Road Engines (SORE)*

CARB describes SORE emissions as “significant,” noting that one hour of operation of the best-selling commercial leaf blower emits smog-forming pollution “comparable to driving a 2017 Toyota Camry about 1,100 miles, or approximately the distance from Los Angeles to Denver.”<sup>x</sup> Smog-forming emissions are made up of sulfur oxides, nitrogen oxides, and volatile organic compounds that cause smog, acid rain, and other health problems but are not greenhouse gases. CARB estimates that, Statewide, daily emissions from SORE equipment surpassed emissions from light-duty passenger cars around 2016.<sup>xi</sup>

In addition, gas-powered leaf blowers and other landscaping equipment generate noise that can impact both the users of this equipment and nearby residents. The most common approaches of cities to regulate leaf blowers establish noise and/or time-of-day restrictions. While such restrictions are effective in managing noise pollution, they do not address the environmental and health impacts of smog-forming emissions.

Studies indicate that the use of electric rather than gas leaf blowers would significantly reduce pollution and greenhouse gas emissions and perform better regarding noise pollution. However, all blowers circulate dust and particulates that can impact people with asthma or respiratory illness. Preliminary research by CARB suggests that equipment operators are exposed to at least 10 times more ultrafine particles than if they were standing next to a busy street, and other studies have cited impacts up to 50 times more ultrafine particles.

### *Leaf Blower Regulations in the Region and State*

Several cities in California, including a few in nearby jurisdictions, have implemented leaf blower or lawn equipment ordinances in different forms. A partial list of these cities can be found in Attachment 1. As noted in the attachment, Palo Alto, Los Altos, Los Gatos, Portola Valley, and Berkeley are among the nearby cities that have a ban on gas leaf blowers. Sunnyvale, Santa Clara, Foster City, Burlingame, Emeryville, and Capitola have imposed noise and/or time-of-day restrictions. Menlo Park has established a temporary ban on operating leaf blowers on certain days as well as a noise limit threshold.

Sustainability staff has talked with staff in a few other cities about their experience, and initial review indicates that many cities have found it can be a long and complicated process to engage the public, address community concerns, minimize hardships on landscaping service providers, craft regulations, and dedicate the resources needed for public outreach and enforcement. The issues and considerations that others have faced are summarized in the section below.

As mentioned previously in this memo, at the State level, in June 2020, CARB proposed a timeline for new regulations, with tightened emissions standards for 2023, zero-emission standards adopted in 2025, and a requirement that all new sales of SORE be required to be zero-emissions equipment should be adopted in 2028. After their June workshop, CARB received nearly 2,000 comments, many of which asked CARB to transition to zero-emission equipment as quickly as possible. As a result, CARB is reevaluating their proposal, which they plan to bring to their board in 2021.

### *Considerations for Regulating Leaf Blower Use*

Leaf blowers are considered to be an efficient tool for cleaning up small debris from lawn and landscape sites, taking considerably less time than brooms and rakes and, therefore, saving on staff costs. Blowers also work in areas with rock, gravel, bark, or mulch that other tools cannot handle effectively. As noted above, electric blowers do not have the same emissions issues as, and may be quieter than, gas blowers. However, they tend to be more expensive, especially when considering the need to purchase multiple batteries to ensure a sufficient power source for larger areas. In addition, battery-operated blowers tend to be less powerful than gas-powered blowers or electric plug-in models (which may not be practical).

The issues of cost and effectiveness are of interest both to residents and businesses that use landscaping services and the businesses that provide such services. In cities that have



explored leaf blower regulation, landscaping companies have actively voiced concerns stating that a ban on gas blowers would be cost-prohibitive for operation. Staff is aware that some cities, weighing these concerns, have decided not to proceed.

If the City decides to explore a ban, extensive community input voicing both strong support and strong opposition can be expected. Therefore, community engagement will be a key part of any process moving forward. This process would need to explore and address a range of considerations, including:

- The health, environmental, and noise impacts, both for residents and landscaping service providers;
- The economic and equity impacts on landscaping businesses, which include small operators, and whose employees tend to be disproportionately low-income and Hispanic; and
- The barriers to compliance, including cost-effectiveness and the challenges for landscaping businesses that work in multiple cities with different requirements.

For leaf blower regulation to be effective, it will be essential to develop strategies and resources to support and enforce compliance. Initial review of the experience in other cities indicates that communication about and enforcement of leaf blower regulations can be very resource-intensive, and there are decisions to be made regarding the role of incentives, public education, outreach to landscape businesses, and fines.

Los Altos and Los Gatos have had leaf blower bans in place since 1991 and 2014 respectively, and both cities have faced challenges enforcing their regulations. Los Altos Hills considered a ban in 2018 but did not proceed, citing concerns about the anticipated costs and challenges associated with enforcement. In West Hollywood, the city found it necessary to hire a dedicated code enforcement technician to address leaf blower violations.

### ***Initial Scope, Process, and Timeline for Adopting Leaf Blower Regulation***

As Attachment 1 shows, there are different approaches to regulating the use of leaf blowers and other SORE equipment, including restricting noise levels and/or hours of operation or prohibiting use of gas-powered equipment. Prohibitions can cover leaf blowers only or also extend to lawn mowers and other motorized landscaping equipment. If Council wishes to proceed with regulating the use of leaf blowers, there are decisions related to both scope and timing.

Regarding scope, staff would suggest a focus on a prohibition of gas-powered leaf blowers, phased in tandem with an incentive program, such as a rebate on the purchase of electric blowers or a trade-in/buy-back of gas blowers. This would help address the economic and equity impacts on landscaping service providers facing the requirement to transition to electric equipment and would assist with compliance and enforcement issues. This approach would build on the work of ESTF-2 and is consistent with Recommendation W-12 in their 2018 report. Staff would not suggest enacting time and noise restrictions at this time as they do not address the emissions concerns raised by community members. However, such restrictions could be established in addition to a ban on gas-powered equipment if that is Council's direction.

Regarding timing, compared to enacting a prohibition on smoking in multi-unit residential buildings, developing and implementing leaf blower regulations would be more complex and time-consuming.

As envisioned by staff, based on initial research, it would require development of a new ordinance, incentive program, and compliance strategy rather than building on existing regulations and programs. It has more complicated stakeholder issues and would require significant levels and multiple rounds of engagement. As a result, the process would take longer, potentially a year or more, and would have a greater impact on staff's work on other projects.

**It is also important to note that since both efforts considered in this memo would involve staff from the City Manager's Office and City Attorney's Office, it would be difficult to proceed with both an amendment to the smoking ordinance and development of a leaf blower ordinance at the same time.**

The steps for developing and adopting an incentive program and leaf blower ordinance would include:

*Electric Leaf Blower Incentive*

- Research options for an incentive program to support transition to electric leaf blowers.
- Conduct stakeholder outreach to providers and users of landscape services.
- Decide on program parameters and develop a program.

- Determine the program duration, likely starting several months before a leaf blower ban becomes effective and extending several months after the ban is in effect.
- Identify a source of funding for the rebates and/or trade-ins.
- Promote and administer the program.

### *Gas-Powered Leaf Blower Ban*

- Review existing leaf blower ordinances and the experience of other jurisdictions.
- Identify ordinance scope and draft key elements, including the implementation time frame, phased to follow implementation of the incentive program.
- Determine the approach to and resource needs for enforcement.
- Seek feedback from the general public and key stakeholders, including the providers and users of landscape services, potentially through mailers, surveys, and public forums.
- Incorporate public input, conduct legal review, and prepare an ordinance for Council adoption. This may require one or more Study Sessions to seek interim policy direction from the City Council.
- Following Council adoption, conduct public outreach regarding the new regulations.

### *Workload Impacts*

If the Council directs staff to proceed with a leaf blower ordinance and incentive program, the City Manager's Office would lead the effort, with the Sustainability team focused on the incentive program and other City Manager's Office staff working on the ordinance. The City Attorney's Office would also be actively engaged.

Given the high volume of priority projects currently being managed by the City Manager's Office, the ambitious scope of SAP-4, which runs through June 2022, and staff vacancies in the Sustainability Division, it would be challenging to make substantive progress on leaf blower regulations before the end of Fiscal Year 2020-21. The challenge would be greater if Council decides to proceed with multi-unit residential smoking

restrictions as well. Consequently, staff recommends Council consider pursuing leaf blower regulations as part of the Fiscal Year 2021-22 goal-setting process.

If Council prefers instead to proceed with a leaf blower incentive program and ban at this time, a number of current and upcoming projects may be delayed in addition to the delays already incurred due to COVID-19 impacts. While it is difficult to say with precision, the projects that may be delayed would include several of the following:

- Development of a wage theft and responsible construction ordinance.
- Development of an enhanced legislative program.
- Assessment of the City's Sustainability Program using a racial equity lens.
- Implementing an online sustainability progress dashboard.
- Running Community Climate Solutions.
- Rolling out a plant-based eating campaign.
- Completing the 2019 community greenhouse gas inventory; and
- Developing an e-bike rebate program.

If the City Council directs staff to proceed with expansion of a leaf blower ordinance, the resource needs associated with implementing and enforcing the ordinance, which could be considerable, will be analyzed during the ordinance development process and presented to Council with the proposed ordinance.

### *Questions for City Council Regarding Regulation of Leaf Blowers*

1. Given the current workload and project impacts, does the City Council agree with staff's recommendation to include leaf blower regulations as a project in the Fiscal Year 2021-22 goal setting process?

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Attachment: 1. California Cities with Leaf Blower Regulations

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  - iii Centers for Disease Control and Prevention, Secondhand Smoke (SHS) Facts (2014), available at: [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/secondhand\\_smoke/general\\_facts/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm).
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  - vii National Fire Protection Association. [Home Fires Started by Smoking \(2019\)](#). <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/US-Fire-Problem/Fire-causes/ossmoking.ashx>
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  - ix American Nonsmokers’ Rights Foundation. U.S. Laws for 100% Smokefree Multi-Unit Housing (2019). <http://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>.
  - ix National Fire Protection Association. [Home Fires Started by Smoking \(2019\)](#). <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/US-Fire-Problem/Fire-causes/ossmoking.ashx>
  - x California Air Resources Board (CARB), Small engines in California – Fact Sheet (2018), available at: [https://ww3.arb.ca.gov/msprog/offroad/sore/sm\\_en\\_fs.pdf](https://ww3.arb.ca.gov/msprog/offroad/sore/sm_en_fs.pdf)
  - xi California Air Resources Board (CARB), Small Off-Road Engines: 2020 Pre-Rulemaking Workshop (2020), presentation slides. Available at: <https://ww2.arb.ca.gov/sites/default/files/2020-06/6.8.20%20SORE%20Workshop%20Slides%20ADA.pdf>