



CITY OF BLOOMINGTON COMMON COUNCIL

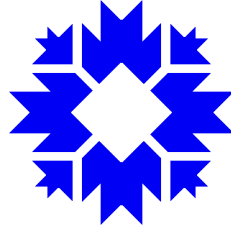
AGENDA
CLIMATE ACTION & RESILIENCE
COMMITTEE
MONDAY | 6:30 PM
13 November 2023

*Hooker Conference Room (#245), Showers Building, 401 N. Morton Street
The public may also access the meeting at the following link:*

<https://bloomington.zoom.us/j/83232110543?pwd=uSrc7ABaLjSf6L0ofKiXDDcLYu9cD8.1>

Chair: Dave Rollo

- I. CALL TO ORDER
- II. WELCOME AND INTRODUCTIONS
- III. DISCUSSION OF GAS POWERED LAWN EQUIPMENT PHASE-OUT GOAL, POTENTIAL REGULATIONS, AND NEXT STEPS
 - a. Check-in from Administration (Shawn Miya)
 - b. Sustainable Princeton Follow Up
 - c. First Draft of Possible Legislation
 - i. Requested Considerations from Tim Street (via email)
 - d. Legal Issues – Possible Preemption
- IV. OPPORTUNITY FOR PUBLIC COMMENT (IF ANY)
- V. SCHEDULING
- VI. ADJOURNMENT



**City of Bloomington
Office of the Common Council**

NOTICE

Monday, 13 November 2023

**Council Climate Action and Resilience Committee
Starting at 6:30 p.m.**

This meeting will be held in the Hooker Conference Room (Suite 245, City Hall, 401 N. Morton St) and may also be accessed electronically via Zoom (see information below).

Join Zoom Meeting

<https://bloomington.zoom.us/j/83232110543?pwd=uSrc7ABaLjSf6L0ofKiXDDcLYu9cD8.1>

Meeting ID: 832 3211 0543

Passcode: 542194

One tap mobile

+13052241968,,83232110543# US

+13092053325,,83232110543# US

Find your local number: <https://bloomington.zoom.us/j/83232110543?pwd=uSrc7ABaLjSf6L0ofKiXDDcLYu9cD8.1>

As a quorum of the Council or its committees may be present, this gathering constitutes a meeting under the Indiana Open Door Law (I.C. § 5-14-1.5). For that reason, this statement provides notice that this meeting will occur and is open for the public to attend, observe, and record what transpires.

Interview – Christine Symington, Executive Director of Sustainable Princeton – Topic: Gas-Powered Landscaping Equipment Restrictions in Princeton, NJ , 24 October 2023

Initial Questions Based on Climate Action and Resilience Committee Conversations (sent ahead of interview and addressed in the sections below):

- 1) How long did it take to develop the ordinance?
- 2) What stakeholders did you involve in the process?
- 3) Did you receive feedback from any particular parties/entities before presenting the legislation to elected officials?
- 4) Was the permitting and ticketing infrastructure already in place or did City departments need to create these systems?
- 5) Were outreach campaigns successful? How did you reach landscapers and convince them to participate?

Who is Sustainable Princeton?

Sustainable Princeton is a 501c3 that grew out of the city's planning a transportation department about ten years ago. The city and the organization share an official contract and agree upon joint initiatives every year.

Sustainable Princeton facilitated and funded the outreach and communication with landscapers and other entities, such as the school systems and Princeton University. The ordinance was written by the city's environmental commission and counsel.

Background of the leaf blower restrictions:

Before the most recent restrictions went into effect, a section of the city's code restricted leaf blower use to certain times of day. These initial restrictions were housed in the city's noise ordinance.

Permitting now helps ensure ethical employment practices, such as carrying workers compensation insurance, and provides a pathway for educating landscapers about leaf blower regulations.

What prompted the initiative to further restrict leaf blowers?

During the COVID-19 stay at home orders, folks realized how loud and annoying leaf blowers are. Quiet Princeton, a chapter of [Quiet Communities](#), helped make the initial push to bring the issue to the city's attention via a petition. Efforts were made to keep petitioners informed during the rest of the process.

Process:

Sustainable Princeton received multiple grants to develop the policy. They began with a steering committee made up of city and community members to establish a mutually agreed upon plan. They began conducting research on other cities' ordinances, incentives, and processes.

Outreach began by creating a list of landscaping companies by searching online, walking and driving around town and looking for trucks, and physically going out and talking with landscapers. Given that many of the landscaping company owners and crew members are Spanish speakers, the organization employed a Spanish speaking community outreach professional to help engage with the Hispanic community. Additionally, they conducted a survey to ask questions related to company size and

equipment type and amount. Listening sessions and workshops served to obtain face to face feedback from stakeholders. The city's environmental commission and its legal counsel formulated the legislation. Education on the rules is provided with landscaper permitting materials.

Outreach:

They held three initial listening sessions:

- 1- Spanish-speaking landscaping crew members only
- 2- Spanish-speaking landscaping company owners
- 3- All Spanish and English speaking landscaping professionals

Refreshments were provided and there was an emphasis on a welcoming environment

What they learned from initial listening sessions:

1. Most landscaping companies are very small – made up by 2 trucks, 4 men, a couple of push mowers, a couple of riding mowers, and several handheld tools such as blowers and trimmers.
2. Workers are well aware of the dangers of their occupation.
3. Small landscapers had invested about 40 to 50 thousand dollars in their equipment. Feared an immediate ban would make that investment all for nothing – considered it would be a “taking”. Worried about the cost of switching to electric equipment.
4. Landscapers worried they would be singled out for regulations, i.e. property owners, the University, and the city itself would not be held to the same standard of rules and the companies.
5. Landscapers feared that without using gas-powered equipment to remove every single leaf and piece of debris, they would not be paid for their work by the customer, not hired again. Essentially, “I am only doing what I have been hired to do.”

Workshops:

Workshops were funded by grantors and stipends were offered to landscapers who attended the workshops. Workshops served to educate landscapers on available equipment and continue to get more information, which was used to draft an ordinance. Another workshop was held with the public works department and the local school system officials. Symington noted that it was key to have landscaping leaders who were proponents of the regulations to help with these in-person events.

They offered refreshments at the workshops, emphasized a welcoming environment at city hall. Consideration was made to holding outreach events at other locations but the city building was the most feasible and near where many of the workers lived.

Electric equipment was auctioned off during the workshops – all funded by local grants.

Second round of listening sessions:

The second round of listening sessions served to garner feedback from landscapers on the draft ordinance.

- 1- Spanish-speaking landscaping crew members only
 - a. Questions asked such as, would you/could you comply with these rules?

- 2- Spanish-speaking landscaping company owners
- 3- All Spanish and English speaking landscaping professionals

Outreach touched a total of about 36 landscape workers and landscape company owners.

Enactment:

The entire process took about a year. A Princeton councilmember bridged the gap between Sustainable Princeton, the steering committee, and the city. Initially, a member of the Human Services Department was involved in the process. However, after turnover in that role occurred, a staff representative was not reinstated. Ms. Symington noted that having a staff member involved in the process would have been beneficial and ideally would have allowed all parties involved to feel positively about the final product.

Although the ordinance was written by the city's Environmental Commission, they did not frame the ordinance as an environmental regulation. Rather, they focused on noise pollution and equity concerns. Equity concerns highlighted the health risks landscape workers encounter when using gas-powered equipment, specifically leaf blowers. Finally, because leaf blower restrictions were already in the 'Noise' section of city code, that is where the updated rules are housed now.

Ms. Symington noted that a neighboring municipality, Montclair, NJ, passed a gas leaf blower ban as an air quality issue and has been sued – plaintiffs state a potential preemption of regulating air quality by the EPA/Clean Air Act. There is no decision yet. Council staff have details related to this case, if you would like to see them.

Ms. Symington emphasized the need for ample outreach during the process leading up to implementing the ban. She also stressed that the burden of compliance should not fall solely on the shoulders of the landscaping companies but also on the property owners that hire them, highlighting the power dynamic between the workers and those who pay them.

Incentives:

Sustainable Princeton raised \$21k to provide \$1000 reimbursement grants to companies for any electric equipment.

Funding:

All funding came from grants awarded to Sustainable Princeton. Sustainable Princeton will share a total budget with us for this initiative soon, which I will pass along to you.

Recommendation on Rule Structure:

Start with a seasonal ban that is effective a year or so in the future. Switch to a full ban a few years after the seasonal ban. This will allow time for equipment turnover and improvements in electric and battery-powered equipment technology.

Links:

[Sustainable Princeton – Changing the Landscape](#)

[Princeton, NJ Landscape Maintenance Regulations](#)



Ash Kulak <ash.kulak@bloomington.in.gov>

Gas-Powered Leaf Blower Ordinance -- Call with Sustainable Princeton

Abigail Knipstine <abigail.knipstine@bloomington.in.gov>

Tue, Oct 31, 2023 at 11:56 AM

To: Isabel Piedmont-Smith <piedmoni@bloomington.in.gov>

Cc: Matt Flaherty <matt.flaherty@bloomington.in.gov>, Dave Rollo <rollod@bloomington.in.gov>, Ron Smith <ron.smith@bloomington.in.gov>, Ash Kulak <ash.kulak@bloomington.in.gov>, Stephen Lucas <lucass@bloomington.in.gov>

Hi Isabel and all,

Thanks for this response and your questions! I've answered them to the best of my knowledge below. I have also attached Sustainable Princeton's budget for this initiative. I do need to note a correction from my meeting notes -- Sustainable Princeton *raffled* off electric equipment at the workshop for landscapers, they did not *auction* off the electric equipment.

It restricts the use of all leaf blowers by time of day/day of week, while adding seasonal restrictions for gas-powered leaf blowers only. It does not mention a phase-out of gas-powered leaf blowers. Is that the plan, however, of the Sustainable Princeton team?

Christine Symington did emphasize a phase out period but you're right, it's not spelled out in the ordinance. I've reached out to the City administrator to get clarity on whether there was a phase out period. When I spoke with Sustainable Princeton, they did not indicate there is a plan to restrict leaf blowers further.

Do they have any data on how their current restrictions are working?

I spoke with Princeton's City Administrator on October 5. He shared that at that time they hadn't issued a single summons, which is how they deal with code violations. However, since 2014, Princeton required landscape companies to register with the city, so that structure was already in place. I learned that enforcement of the registration requirement was very loose until the leaf blower restrictions went into place. Once Sustainable Princeton began interviewing landscape workers and company owners, they learned that many companies were skipping the registration to avoid paying standardized wages and keeping workers comp insurance. This created a competitive disadvantage for those companies who *did* register. It seems that all companies are registering now.

The fiscal/staffing impacts of requiring licensing?

I have a note out to the City Administrator regarding this question.

[Quoted text hidden]

 **Partners for Places budget submitted and actual.pdf**
108K

Submitted Budget

Line Item/Activity	Notes	P4P \$	Matching \$	Total
Personnel				
Staff salaries: Community Outreach	Tulia Jimenez-Vergara, LALDEF, FUTURO Program Director, Liliana Morenilla , LALDEF, Princeton Community Coordinator, Ana Pazmino, Unidad Latina en Accion	8,000		8,000
Staff salary: Project and Grant management	Christine Symington, Program Director, Sustainable Princeton, Molly Jones, Executive Director, Sustainable Princeton	5,000	16,000	21,000
Intern stipend	Samuel Garcia, Intern, Sustainable Princeton	3,000		3,000
Benefits	Based on 14% of salary cost, divided among salaries paid	2,240	2,240	4,480
Subtotal Personnel		18,240	18,240	36,480
Consultants/Contractors				
Quiet Communities/AGZA	Program development guidance and implementation support	3,000		3,000
Communications consultant/ Graphic design	Development of landscaper and resident educational materials and ads for workshop promotion	1,760	1,760	1,760
Subtotal Consultants/Contractors		4,760	1,760	6,520
Meetings/Events				
Food for landscaper gatherings		500		500
Subtotal Meetings/Events		500	-	500
Travel				
Travel				-
Subtotal Travel				-
Materials and Supplies				
Electric landscape equip. vendor	funding to serve as an incentive to reduce the cost of electric landscaping equipment	500	1,000	1,500
Advertising	Ads for workshops and public outreach events in the local paper	1,000		1,000
Basic office supplies			500	500
Subtotal Materials and Supplies		1,500	1,500	3,000
Office & Occupancy				
Technology/ Office equipment			2,000	2,000
Subtotal Office & Occupancy			2,000	2,000
Indirect/Overhead				
Indirect/Overhead			1,500	1,500

Subtotal Indirect/Overhead		-	1,500	1,500
Total		25,000	25,000	50,000
In-Kind Support (optional)				
Intern stipend	Masters in Public Health student- TBD, Rutgers School of Public Health		3,000	

Actual Budget

Expense Item	Total Cost of Expense Item	Amount Covered by P4P	Amount Covered by Local Funder	Amount from Other Sources	Amount Remaining
Equity Consultant	\$5,147.50	\$5,147.50	\$0.00		\$0.00
Personnel	\$37,726.47	\$18,282.04	\$19,444.43		\$0.00
Consultants	\$6,388.00	\$4,760.00	\$1,628.00		\$0.00
Meeting expenses	\$927.57	\$500.00	\$427.57		\$0.00
Office occupancy	\$2,000.00		\$2,000.00		\$0.00
Indirect overhead	\$1,500.00		\$1,500.00		\$0.00
Materials and Supplies	\$1,310.46	\$1,310.46	\$0.00		\$0.00
TOTAL	\$55,000.00	\$30,000.00	\$25,000.00	\$0.00	\$0.00



MEMO FROM COUNCIL OFFICE ON:

To: Members of the Climate Action and Resilience Committee

From: Abbi Knipstine, Assistant Administrator/Legal Research Assistant

Date: November 3, 2023

Re: Why is the Climate Action and Resilience Committee considering restrictions on the use of gas-powered lawn and garden equipment, particularly leaf blowers?

Synopsis

The Council's Climate Action and Resilience Committee is exploring ways to reduce the harmful health and environmental effects caused by gasoline-powered lawn and garden equipment. To do this, the Committee hopes to introduce an ordinance that will limit the times of day and year that the machines may be used, with a special focus on gasoline-powered leaf blowers. The rules would go into place over the span of several years to allow the existing population of gas-powered equipment to phase out by depreciation and be replaced with electric equipment.

Justification

Gas-powered leaf blowers are particularly harmful due to the sound and exhaust they emit as well as the particulate matter that they blow off of the ground, surfaces, and from within crevices. The risks associated with exposure to the loud noises and inhaling the pollutants increase with proximity to the machines, putting operators at the greatest risk (McDonald 2019). According to the CDC, gas-powered lawnmowers and leaf blowers can reach 80-85 decibels, which can cause damage to hearing after two hours of exposure (*What noises cause hearing loss?* 2022).

A 2015 report by the EPA concluded that gas-powered lawn and garden equipment, including leaf blowers, emit toxic and carcinogenic levels of volatile organic compounds: benzene, 1,3 butadiene, acetaldehyde, and formaldehyde as well as carbon monoxide, nitrogen oxides, PM 10 and PM 2.5, and carbon dioxide. The researchers determined that policies should be introduced to protect the public from these pollutants and encourage transition to non-polluting lawn care equipment (Banks and McConnell, 2015). To date, over 100 local governments, California, and Hawaii have some sort of restrictions on the use of gas-powered leaf blowers (*Municipalities, counties and states with leaf blower restrictions.* 2020).

Finally, restrictions on gas-powered lawn and garden equipment leading to a phase out of all gas-powered equipment helps to achieve the City of Bloomington's Climate Action Plan Transportation and Land Use Strategy TL 1-1-3: *Establish a gas powered lawn equipment phase-out ordinance transitioning to lawn equipment powered by electricity or alternative clean fuels and decreased noise pollution levels.* The Council adopted the Climate Action plan in 2021.



City of Bloomington Indiana

City Hall | 401 N. Morton St. | Post Office Box 100 | Bloomington, Indiana 47402

Office of the Common Council | (812) 349-3409 | Fax: (812) 349-3570 | email: council@bloomington.in.gov

Relevant Materials

- [City of Bloomington Climate Action Plan, 2021](#)
- [CDC - What Noises Cause Hearing Loss?](#)
- [EPA - National Emissions from Lawn and Garden Equipment, Report Slides](#)
- [Meeting Packet Containing Sample Legislation and Interview Notes - October 10, 2023](#)

Contact

Ash Kulak, Assistant Administrator/Attorney, 812-349-3565, ash.kulak@bloomington.in.gov

Dave Rollo, Chair, Climate Action and Resilience Committee, rollod@bloomington.in.gov

Citations

Banks, J. L., & McConnell, R. (2015). *National Emissions from lawn and Garden Equipment - US EPA*. United States Environmental Protection Agency.
<https://www.epa.gov/sites/default/files/2015-09/documents/banks.pdf>

Centers for Disease Control and Prevention. (2022, November 8). *What noises cause hearing loss?*. Centers for Disease Control and Prevention.
https://www.cdc.gov/nceh/hearing_loss/what_noises_cause_hearing_loss.html

McDonald, M. (2019, September 5). *How leaf blowers are trying to kill us: Canadian audiologist*. Canadian Audiologist | The Official Publication of the Canadian Academy of Audiology. <https://canadianaudiologist.ca/leaf-blowers-trying-to-kill-us-feature/#:~:text=As%20a%20start%2C%20ban%20leaf,sweep%20paved%20surfaces%20of%20clippings>.

Municipalities, counties and states with leaf blower restrictions. Quiet Communities. (2020). https://motherearthproject.org/wp-content/uploads/2020/10/Municipalities-that-Ban-GPLB_Sept-2020.pdf

ORDINANCE 24-XX

TO ADD A NEW CHAPTER OF THE BLOOMINGTON MUNICIPAL CODE WITHIN TITLE 6, "HEALTH AND SANITATION," TO BE ENTITLED CHAPTER 6.16, "OFF ROAD GAS POWERED LAWN AND GARDEN EQUIPMENT"

Re: Regulation of Outdoor Chemical and Noise Pollutants Generated by Off Road Gas Powered Lawn and Garden Equipment

- WHEREAS, [Resolution 21-08](#), which passed unanimously, accepted the 2021 City of Bloomington Climate Action Plan as an advisory document on April 21, 2021; and
- WHEREAS, the goal of the Climate Action Plan is to reduce City greenhouse gas emissions by 25% by 2030 and achieve carbon neutrality by 2050; and
- WHEREAS, in order to achieve this goal, the Climate Action Plan includes a strategy to improve air quality and reduce citywide off-road and lawn equipment emissions to below 35,000 metric tons annually by implementing two actions: (1) introducing a policy to replace City equipment with electric and low-carbon fuel alternative options, and (2) developing an incentive program to convert fuel-burning lawn equipment to electric; and
- WHEREAS, the City of Bloomington Climate Action and Resilience Committee met **six** times since fall of 2022 to discuss both actions and held a stakeholder meeting on February 21, 2023, at which local stakeholders in the landscaping industry were invited to discuss the transition from gas-powered to electric or low-carbon fuel alternative options, with the opportunity for public comment; and
- WHEREAS, [where the City currently is in the process of phasing out its own equipment, as well as updates from IU and MCCSC]; and
- WHEREAS, gas-powered leaf blowers with two-stroke engines emit low-frequency sound waves, which cause the sounds to travel longer distances and more easily penetrate walls and other barriers, which disrupts residents in and around their homes¹; and
- WHEREAS, gas-powered leaf blowers and other landscaping machines with two-stroke internal combustion engines do not completely combust their fuel, which results in the emission of toxic and carcinogenic substances such as carbon monoxide, nitrogen oxides, and volatile organic compounds²; and
- WHEREAS, operating a leaf blower results in particulate matter lifting into the air, which degrades localized air quality by increasing coarse and fine particles remaining in the air that irritates eyes, throats, and lungs and exposes workers utilizing the equipment and the nearby public to health risks³; and
- WHEREAS, studies show that leaf blowers⁴, string trimmers, and other motorized handheld landscaping tools⁵ produce more particulate matter emissions than automobile exhaust, especially motorized working equipment with two-stroke engines; and

Commented [AK1]: sixth meeting discussing phase out goals, counting Nov 2023 mtg

¹ Walker, E. & Banks, J.L. "Characteristics of Lawn and Garden Equipment Sound: A Community Pilot Study." *Journal of Environmental & Toxicological Studies*. (November 2017). <http://dx.doi.org/10.16966/2576-6430.106>.

² Zhu, X., Durbin, T.D., Norbeck, J.M., & Cocker, D. "Internal Combustion Engine (ICE) Air Toxic Emissions: Final Report." University of California, Riverside. (July 2004). <https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/02-334parta.pdf>.

³ California Environmental Protection Agency: Air Resources Board. "A Report to the California Legislature on the Potential Health and Environmental Impacts of Leaf Blowers." (February 2000). <https://ww2.arb.ca.gov/resources/documents/health-and-environmental-impacts-leaf-blowers>.

⁴ Two-stroke engine leaf blowers produced 23 times the CO and nearly 300 times more NMHC than a crew cab pickup. Kavanagh, J. "Emissions Test: Car vs. Truck vs. Leaf Blower." Edmunds. (December 2011). <https://www.edmunds.com/car-reviews/features/emissions-test-car-vs-truck-vs-leaf-blower.html>.

⁵ Peak exposure levels occurred when using motorized working equipment. Meier, R., Cascio, W., Danuser, B., & Riediker, M. "Exposure of Highway Maintenance Workers to Fine Particulate Matter and Noise." *The Annals of Occupational Hygiene*, Volume 57, Issue 8. (May 2013). <https://doi.org/10.1093/annhyg/met018>.

WHEREAS, studies also show that gasoline powered lawn mowers produce as much air pollution in one hour of cutting grass as a 100-mile automobile trip⁶; and

WHEREAS, extensive evidence exists on the adverse health effects of particulate matter and chemical substance emissions, including cardiovascular disease, stroke, respiratory disease, cancer, neurological conditions, premature death, and effects on prenatal development⁷; and

WHEREAS, the hazardous effects of air pollutants and noise are most harmful to landscaping workers, as exhaust emissions are most concentrated at the point of origin⁸ and the noise is loudest closest to the equipment in use; and

WHEREAS, the City of Bloomington Climate Action & Resilience Committee has determined that reasonable regulation of gas powered lawn and garden equipment is necessary to protect and promote the health and well-being of landscaping workers and the public from localized air and noise pollution; and

WHEREAS, in alignment with phase-out goals from [other entities], the City of Bloomington Climate Action & Resilience Committee is recommending the phasing out of gas powered leaf blowers and string trimmers within two years and gas powered lawn mowers within five years, with immediate seasonal and time of day limitations on the use of gas powered leaf blowers in order to reduce community exposure to unsafe sound levels and chemical pollutants as well as to reduce emissions in line with the Climate Action Plan's goals; and

Commented [AK2]: IU
MCCSC
MoCo

WHEREAS, the phase out periods recommended by the Climate Action & Resilience Committee have taken into account concerns from local stakeholders in the landscaping business regarding the time it would take to replace current gas powered equipment with electric versions and the technology improvements needed to make operations as efficient using solely electric or battery powered lawn and garden equipment; and

Commented [AK3]: Confirm CARC is actually doing this.

WHEREAS, electric leaf blowers, many of which offer power on par with gas-powered models, albeit with limited run times per battery charge for cordless models, are significantly quieter, more efficient, and more reliable than gas-powered versions, as well as having no emissions at the point of use⁹, which reduces harm to operators, other people nearby, and reduces the likelihood they will end up in a landfill; and

WHEREAS, at least 38 municipalities and towns¹⁰ in the United States have restricted or limited gas powered lawn and garden equipment or have plans to phase out use of this equipment, especially gas powered leaf blowers; and

WHEREAS, this legislation would enable the City to create a limited time grant or incentive program for residents and local businesses to trade in gas powered equipment for electric versions, which will help support the transition away from gas powered lawn and garden equipment; and

⁶ American Chemical Society. "One Hour Of Grass Cutting Equals 100 Miles Worth Of Auto Pollution." ScienceDaily. (June 2001). www.sciencedaily.com/releases/2001/05/010529234907.htm.

⁷ Banks, J.L. & McConnell, R. "National Emissions from Lawn & Garden Equipment." U.S. Environmental Protection Agency, Region I. (September 2015). <https://www.epa.gov/sites/default/files/2015-09/documents/banks.pdf>.

⁸ National Institute for Occupational Safety & Health. "Carbon Monoxide Hazards from Small Gasoline Powered Engines." U.S. Centers for Disease Control. (Reviewed April 2023). <https://www.cdc.gov/niosh/topics/co/>.

⁹ Hope, P. "Leaf Blower Buying Guide." Consumer Reports. (Updated October 2023). <https://www.consumerreports.org/home-garden/leaf-blowers/buying-guide/>.

¹⁰ California: Oakland, San Anselmo. Colorado: Carbondale, City of Aspen. Connecticut: Greenwich, Ridgefield. Delaware: Lewes. Florida: Palm Beach. Illinois: Evanston, Glencoe, Lincolnwood, Wilmette. Massachusetts: Arlington, Town of Brookline, Cambridge. Maryland: Montgomery County. North Carolina: Chapel Hill. New Jersey: Princeton, Township of Montclair. New York: White Plains, Dobbs Perry, Flower Hill, Town of Greenburgh, New Rochelle, Oyster Bay, Pleasantville, Sleepy Hollow, Tarrytown, Thomaston, Town of Huntington, Town of New Castle, Ardsley, Bronxville, Great Neck, Larchmont, Tuckahoe, Yonkers. Washington: Seattle.

WHEREAS, the primary focus on education and incentives to trade in gas for electric, rather than purely punitive enforcement methods, will encourage active participation by City residents and local businesses; and

WHEREAS, with this legislation the Common Council accepts and implements the Climate Action & Resilience Committee's recommendations as to the phase out timeline goals, especially considering the incentive programs to be made available, the comparable cost of electric to gas models for these types of motorized handheld landscaping equipment, and the limited nature of the restrictions that will phase out only specific types of gas powered equipment that are both smaller and less difficult to replace than large pieces of equipment and other high capital investments for local businesses in the landscaping industry; and

Commented [AK4]: this legis should come with a cmtee report

WHEREAS, the Common Council finds that the provisions of this Ordinance are consistent with the City's 2021 Climate Action Plan and other previously adopted items of legislation;

Commented [AK5]: This is an attempt to get across: incentive programs to trade in / switch that exist to justify the quick time period, plus only apply to these sp. types of equipment and not large equipment that is a higher capital investment and harder to replace

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. A new Chapter, Chapter 6.16, shall be added to the Bloomington Municipal Code. The Chapter shall be entitled "Off Road Gas Powered Lawn & Garden Equipment" and shall be inserted into the Table of Contents for Title 6 and shall read as follows:

Sections:

6.16.010 Purpose and Applicability

6.16.020 Definitions

6.16.030 Use of Off Road Gas Powered Lawn & Garden Equipment

6.16.040 Seasonal and Time of Day Limitations

6.16.050 Exceptions

6.16.060 Enforcement by City

6.16.070 Violations; Penalties

6.16.080 Reimbursement Programs

6.16.010 Purpose and Applicability

The purpose of this Chapter is to phase out the use of specific gas powered lawn and garden equipment and encourage their replacement with electric versions, and shall apply within the corporate boundaries of the City of Bloomington ("the city").

6.16.020 Definitions

When used in this Chapter, the following terms shall have the following meanings:

- (a) "Off road gas powered lawn and garden equipment" means lawn mowers, leaf blowers, string trimmers, or other machines used to maintain lawns and landscaping [Lewes] that are powered by gasoline or otherwise equipped with an engine that generates motive power by the burning of gasoline or other fuel with air inside a combustion chamber [White Plains]. [This definition includes, but is not limited to, machines with two-cycle internal combustion engines powered by petroleum-based fuels [San Anselmo].
- (b) "Electric or battery powered lawn and garden equipment" means lawn mowers, leaf blowers, string trimmers, or other machines used to maintain lawns and landscaping [Lewes] that are powered by an electric motor, which derives its energy from a battery or other electrical source. [White Plains]
- (c) "Leaf blower" means a home or commercial tool that is primarily used for, but not limited to, accumulating leaves, grass clippings, cleaning gutters, and other related tasks. [where did we get this from??]
"Leaf blower" means any motorized device that is used to blow leaves, dirt, and other debris off sidewalks, driveways, lawns, and other surfaces. [Oakland]
"Leaf blower" means any device which is used or designed to move leaves, grass clippings, dust, dirt, or other matter by blowing them with air emitted by the device. [Village of Larchmont]

Commented [AK6]: Broad enough to include chainsaws and snow blowers. Would not include portable generators?

Commented [AK7]: Just keep this sentence in def of gas powered leaf blower instead?
OR – keep this language and delete the 2 further defs of "gas" and "electric" leaf blowers?

Commented [AK8]: which of the 3 defs works best?

- (d) "Gas powered leaf blower" means a leaf blower powered by the burning of gasoline or other fuel, [Evanston & White Plains] including but not limited to leaf blowers equipped with a two-cycle internal combustion engine powered by petroleum-based fuels. [San Anselmo]
- (e) "Electric leaf blower" means a leaf blower powered solely by electricity, [Evanston] including but not limited to battery-powered leaf blowers and cordless rechargeable leaf blowers. [Oakland]
- (f) "Lawn mower"
- (g) "String trimmer" means any motorized tool which uses a flexible monofilament line instead of a blade for cutting grass and other plants, including but not limited to any trimmer, line trimmer, whipper-snapper, weed eater, or weed whacker. [Oakland]

Commented [AK9]: Do these need further defined or does (a) pretty much cover it for gas powered and (b) cover it for electric? Considering deletion of these 2 defs.

Commented [AK10]: Does this need a def?

6.16.030 Use of Off Road Gas Powered Lawn & Garden Equipment

The use of the following off road gas powered lawn and garden equipment shall be restricted according to the following timeline ("phase out period"):

- (a) The use of gas powered leaf blowers is not permitted 2 years following the effective date of this ordinance. [Evanston]
- (b) The use of gas powered string trimmers is not permitted 2 years following the effective date of this ordinance.
- (c) The use of gas powered lawn mowers is not permitted 5 years following the effective date of this ordinance.
- (d) ~~x~~

Commented [AK11]: Rule prohibiting gas powered lawn and garden equipment in city limits (3 subsections for each type) [Evanston, IL; Lewes, DE; Oakland, CA; San Anselmo, CA; Village of Larchmont, NY; White Plains, NY]

Commented [AK12]: any additional subsection for a catchall provision, re: any other 2-stroke engines not captured by these rules? Or are gas powered (2-stroke) leaf blowers enough / exactly what CARC wants to target?

6.16.040 Seasonal and Time of Day Limitations

The use of the following off road gas powered lawn and garden equipment shall be limited to the following seasons and times of day:

- (a) Upon the effective date of this ordinance, the operation of gas powered leaf blowers is restricted as follows: [White Plains]
 - (1) Gas powered leaf blowers may only be used during the periods [spring] and [fall].
 - (2) Operating hours: Gas powered leaf blowers may only be operated Monday through Friday from 9 a.m. to 5 p.m., Saturdays from 10 a.m. to 4 p.m., and Sundays from 12 p.m. to 4 p.m.
- (b) There shall be no seasonal or time of day limitations on the use of ~~any other off road gas powered lawn and garden equipment, including~~ gas powered string trimmers and lawn mowers, until the date at which they are no longer permitted under Section 6.16.030.

Commented [AK13]: It reads better to cut this part, but does it make sense to still clarify and explicitly state that no other gas powered machines are limited, even when they are not prohibited under this ord?

6.16.050 Exceptions

- (a) The use of electric or battery powered lawn and garden equipment is permitted without any restrictions or seasonal or time of day limitations.
- (b) Gas powered lawn and garden equipment shall not be prohibited when used in response to a bona fide emergency such as a power outage, snow storm, or other natural disaster or extreme weather event, including but not limited to the removal of fallen trees or other debris from the right of way following a storm. [Princeton & Larchmont]
- (c) This Chapter does not affect the use of portable generators, chainsaws, power washers, and snow blowers, regardless of whether these machines are powered by gasoline or electricity.
- (d) This Chapter does not apply to the following entities: [list]

Commented [AK14]: exceptions (emergencies / certain types of gas powered equipment / all elec equipment) [Princeton, NJ]

Commented [AK15]: Does CARC want to limit or restrict snow blowers? Need to ask.

Any other specifically exempted machines? This would be especially necessary if there is a catchall provision for any/all other 2-strokes. Ask at next meeting.

Commented [AK16]: Any particular places, institutions, entities to consider here? Thinking large properties with massive acreage to cover. Some jurs exempt school districts (San Anselmo), golf courses and baseball/turf fields (Evanston), construction projects repairing pub streets (Evanston)

6.16.060 Enforcement by City

This Chapter shall be enforced by the Bloomington [Police] Department. The city may use any of the enforcement tools available under the Bloomington Municipal Code as permitted by state law including, but not limited to, administrative citations, fines, and nuisance abatement. [San Anselmo]

Members of the city responsible for enforcement including, but not limited to, community service specialist officers, may issue a citation for any violation of this Chapter as described in Section 6.16.070 in either of the following situations: [Montgomery]

- (a) An enforcement officer witnesses the violation; or
- (b) The city receives one or multiple complaints of a violation supported by photographic evidence and submitted through bloomington.in.gov/ureport/.

6.16.070 Violations; Penalties

(a) Unless an exception applies under Section 6.16.050, the violation of any provision of Section 6.16.030 or 6.16.040 will result in the following penalties: [similar to Princeton, NJ]

- (1) First violation – oral or written warning, accompanied with educational materials
- (2) Second and subsequent violations within the phase out period – written warning
- (3) Second and subsequent violations after the phase out period – a fine not to exceed [\$]

(b) Members of the city responsible for enforcement will, at the time of citation, provide additional educational materials to the parties operating or responsible for the operation of the equipment in violation of this Chapter. These materials will be generated by the [City entity/dept] and will provide violator(s) with information on these regulations, as well as resources and incentives available to facilitate the transition to electric or battery powered lawn and garden equipment.

(c) The following entities are deemed to have committed a violation of this Chapter under subsection (a): [Larchmont]

- (1) The party operating the off road gas powered lawn and garden equipment;
- (2) The party who employed the person operating the off road gas powered lawn and garden equipment; and
- (3) The party who owns the property where the violation occurs.

(d) Replacement of off road gas powered lawn and garden equipment with electric or battery powered lawn and garden equipment shall negate any administrative citation or other penalty issued under this Section. Proof of replacement may be supplied by delivering the gas powered lawn and garden equipment to the city or showing proof of purchase of electric or battery powered lawn and garden equipment to [city entity].

(e) A violation of any provision of this Chapter that is a threat to public health, safety, and welfare is declared a public nuisance and shall be subject to abatement by the city at the violator’s expense. [San Anselmo & other lang borrowed from 10.30.020]

Commented [AK17]: what should this be? need CARC consensus
Compile usual BMC fine options for CARC to look at?

6.16.080 Reimbursement Programs

(a) The [Economic & Sustainable Development] Department may establish a limited-time program to partially reimburse city residents and businesses that purchase electric or battery powered lawn and garden equipment to replace off road gas powered lawn and garden equipment. [Montgomery, MD]

(b) To receive reimbursement, [XYZ must happen].

(c) Participation in this, or any other, incentive program offering partial or full reimbursement for the purchase of electric or battery powered lawn and garden equipment shall negate any administrative citation or other penalty issued under this Chapter. Proof of participation may be supplied to [city entity] in order to negate any previously issued citation.

Commented [AK18]: Thoughts on keeping or discarding this? I considered saying that “excessive” violations would be subject to nuisance abatement but then that got to be too nebulous as to what “excessive” is and when nuisance abatement would actually apply.

Commented [AK19]: ESD/other dept must determine. Montgomery, MD says (paraphrasing): To receive reimbursement, an owner of one or multiple pieces of off road gas powered lawn and garden equipment must apply to [city entity] in a form prescribed by [city entity] and deliver the gas powered equipment to the city.

SECTION 2. If any section, sentence or provision of this ordinance, or application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions or application of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 3. This ordinance shall be in full force and effect on [DATE].

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2024.

[PRES], President
Bloomington Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2024.

NICOLE BOLDEN, Clerk,
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2024.

[MAYOR], Mayor
City of Bloomington

SYNOPSIS

This ordinance makes amendments to Title 6 of the Bloomington Municipal Code to add a new Chapter 6.16 entitled “Off Road Gas Powered Lawn & Garden Equipment” that would, with specified exceptions, phase out the use of gas powered leaf blowers and string trimmers within two years and lawn mowers within five years, as well as institute seasonal and time of day limitations on the use of gas powered leaf blowers immediately following the effective date of this ordinance. This ordinance also authorizes the [Dept] to enforce this new Chapter, specifies the penalties for violations, and authorizes [Dept] to establish a limited-time reimbursement program to partially reimburse city residents and businesses that purchase electric alternatives to gas powered lawn and garden equipment.



Ash Kulak <ash.kulak@bloomington.in.gov>

Climate Action and Resilience Committee -- gas-powered leaf blower legislation

Tim Street <tim.street@bloomington.in.gov>
To: Abigail Knipstine <abigail.knipstine@bloomington.in.gov>
Cc: Ash Kulak <ash.kulak@bloomington.in.gov>

Thu, Oct 26, 2023 at 2:15 PM

Abbi,

I'm just going to put some thoughts into bullet point form here; let me know if you need anything additional or have questions on this feedback:

- We have accomplished a lot of electrification in the Parks department in the past two years and have in general found the hand-held battery equipment to perform well for our needs. The exception is in the fall when we might need to move heavy, wet leaves off of trails and other amenities. I agree that a seasonal allowance would be good. I don't have very specific dates to provide, other than something like October 1 - sometime in December might be appropriate.
- In 2023, the department purchased 16 battery blowers. Our goal is to be "battery first" in all of our handheld equipment needs, meaning battery equipment is the first thing we grab for use -- unless batteries run out or additional power is needed to complete a job.
- There is certainly a spring season of catkins, etc. that come off of trees but the overall need for gas-powered blowers is less than in the fall.
- I assume legislation would distinguish between handheld (two-stroke) equipment and other pure gas equipment -- my understanding is that part of the motivation for legislation is the noise, but also the significant emissions that come from two-stroke equipment. I ask because we also have pull-behind "trailer blowers" we use to clear parking lots, trails, etc. -- especially in the fall.
- The Cascades Golf Course is a little behind electrification than the rest of the Parks Department, but we aim to purchase more electric blowers for that area in 2024.
- Our staff feel there should be exceptions for storm events where there are lots of trees down. We also rely on gas leafblowers to make fire breaks for prescribed fires at Griffy Lake Nature Preserve and think an exception would be needed there as well (many but not all burns would fall into the fall "allowable" window anyway; some take place in spring).
- While we have more battery chainsaws now and use them frequently, we still rely more heavily on mixed gas chainsaws for larger removals due to power needs. I'm not sure if Council is considering legislation broader than just blowers. I also want to note that while we've purchased a few battery zero-turn mowers, we're still a ways off from being converted for mowing. Parks also relies on contracted mowing for most of our mowed areas.

Thanks,



Tim Street

Interim Director
Parks & Recreation
City of Bloomington, IN
tim.street@bloomington.in.gov
812.349.3706

(he/him/his)

[Quoted text hidden]

- (A) holding the permit; or
- (B) registered;

has performed substandard work or has otherwise violated any condition of the permit or registration.

(4) A requirement for a license for an individual to practice an occupation or profession when the unit determines the establishment and enforcement of health and safety standards for the occupation or profession are appropriate and necessary to protect the public.

(b) Except as provided in subsection (a), a unit does not have the power to license, register, or certify a person to practice the person's profession or occupation within the unit if the occupation or profession is subject to licensure, registration, or certification under the Indiana Code.

As added by P.L.172-2018, SEC.3 and P.L.182-2018, SEC.5.

IC 36-1-3-13

Local units prohibited from requiring or prohibiting particular component, design, or type of material used in building construction based on energy saving or producing qualities; exemption for construction or design of buildings owned or used by unit

Sec. 13. (a) Unless required under IC 36-7-2-9, a unit does not have the power to do the following:

(1) Require that a particular component, design, or type of material be used in the construction of a building or other structure because of the energy saving or energy producing qualities of the component, design, or material.

(2) Prohibit the use of a particular component, design, or type of material in the construction of a building or other structure because the component, design, or material does not meet a standard for energy saving.

(3) Require that a building or other structure be retrofitted with a particular device or type of material because of the energy saving or energy producing qualities of the device or material.

(4) Prohibit or restrict the purchase or use of vehicles or other machines based upon the type of energy that powers the vehicle or machine.

(5) Prohibit the sale, installation, or use of any of the following:

(A) Natural gas powered home heating equipment.

(B) Natural gas powered home appliances.

(C) Grills, stoves, and other food preparation appliances designed to be used outdoors.

(D) Natural gas powered:

(i) heating appliances; and

(ii) torches, lamps, and other decorative features;

designed to be used outdoors.

(6) Enact an ordinance, adopt a resolution, or enforce an ordinance or resolution that purports to exercise a power denied by subdivisions (1) through (5).

(b) This section does not apply to requirements included in procurement documents used to procure goods and services, including the construction or design of buildings, to be owned or used by the unit. A unit may adopt bid specifications for a public works project that include energy savings or energy production provisions with respect to the components, design, or materials for the specific project.

As added by P.L.180-2021, SEC.4.

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary may treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term “Pioneer Homes” means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

- (1) Anchorage, Alaska.
- (2) Fairbanks, Alaska.
- (3) Juneau, Alaska.
- (4) Ketchikan, Alaska.
- (5) Palmer, Alaska.
- (6) Sitka, Alaska.

(d) LIMITATION.—The number of beds occupied by veterans collectively in the six Pioneer Homes listed under subsection (c) for which per diem would be paid under this authority shall not exceed the number of veterans in State beds that otherwise would be permitted in Alaska under the Department of Veterans Affairs State home regulations governing the number of beds per veteran population.

Space Shuttle
Columbia.

SEC. 427. Of the amounts available to the National Aeronautics and Space Administration, such sums as maybe necessary for the benefit of the families of the astronauts who died on board the Space Shuttle Columbia on February 1, 2003, are available under the terms of section 203(c)(13) of the National Aeronautics and Space Act of 1958, as amended, independent of the limitations established therein.

California.

SEC. 428. REGULATION OF SMALL ENGINES. (a) In considering any request from California to authorize the State to adopt or enforce standards of other requirements relating to the control of emissions from new non-road spark-ignition engines smaller than 50 horsepower, the Administrator shall give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

Deadlines.
42 USC 7547
note.

(b) Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations under the Clean Air Act that shall contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower. Not later than December 31, 2005, the Administrator shall publish in the Federal Register final regulations containing such standards.

Federal Register,
publication.

(c) No State or any political subdivision thereof may adopt or attempt to enforce any standard or other requirement applicable to spark ignition engines smaller than 50 horsepower.

(d) EXCEPTION FOR CALIFORNIA.—The prohibition in subsection (c) does not apply to or restrict in any way the authority granted to California under section 209(e) of the Clean Air Act (42 U.S.C. 7543(e)).

(e) EXCEPTION FOR OTHER STATES.—The prohibition in subsection (c) does not apply to or restrict the authority of any State

This content is from the eCFR and is authoritative but unofficial.

Title 40 – Protection of Environment
Chapter I – Environmental Protection Agency
Subchapter U – Air Pollution Controls

Part 1074 Preemption of State Standards and Procedures for Waiver of Federal
Preemption for Nonroad Engines and Nonroad Vehicles

Subpart A Applicability and General Provisions

§ 1074.1 Applicability.

§ 1074.5 Definitions.

§ 1074.10 Scope of preemption.

§ 1074.12 Scope of preemption-specific provisions for locomotives and locomotive engines

Appendix A to Subpart A of Part 1074

State Regulation of the Use and Operation of Nonroad Internal
Combustion Engines

Subpart B Procedures for Authorization

§ 1074.101 Procedures for California nonroad authorization requests.

§ 1074.105 Criteria for granting authorization.

§ 1074.110 Adoption of California standards by other states.

§ 1074.115 Relationship of federal and state standards.

**PART 1074—PREEMPTION OF STATE STANDARDS AND
PROCEDURES FOR WAIVER OF FEDERAL PREEMPTION FOR
NONROAD ENGINES AND NONROAD VEHICLES**

Authority: 42 U.S.C. 7401–7671q.

Source: 73 FR 59379, Oct. 8, 2008, unless otherwise noted.

Subpart A—Applicability and General Provisions

§ 1074.1 Applicability.

The requirements of this part apply with respect to state and local standards and other requirements relating to the control of emissions from nonroad engines and nonroad vehicles.

§ 1074.5 Definitions.

The definitions in this section apply to this part. As used in this part, all undefined terms have the meaning the Act gives to them. The definitions follow:

Act means the Clean Air Act, as amended, 42 U.S.C. 7401–7671q.

Administrator means the Administrator of the Environmental Protection Agency and any authorized representatives.

Commercial means an activity engaged in as a vocation.

Construction equipment or vehicle means any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

Engine used in a locomotive means either an engine placed in a locomotive to move other equipment, freight, or passenger traffic, or an engine mounted on a locomotive to provide auxiliary power.

Farm equipment or vehicle means any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

Locomotive means a piece of equipment meeting the definition of locomotive in 40 CFR 1033.901 that is propelled by a nonroad engine.

New has the following meanings:

- (1) For locomotives, new has the meaning given in 40 CFR 1033.901.
- (2) For engines used in locomotives, new means an engine incorporated in (or intended to be incorporated in) in a new locomotive.
- (3) For other nonroad engines and equipment, new means a domestic or imported nonroad engine or nonroad vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser. Where the equitable or legal title to an engine or vehicle is not transferred to an ultimate purchaser until after the engine or vehicle is placed into service, then the engine or vehicle will no longer be new once it is placed into service. A nonroad engine or vehicle is placed into service when it is used for its functional purposes. This paragraph (3) does not apply to locomotives or engines used in locomotives.

Nonroad engine has the meaning given in 40 CFR 1068.30

Primarily used means used 51 percent or more.

States and localities means any or all of the states, commonwealths, and territories in the United States including the District of Columbia and any or all of their political subdivisions.

Ultimate purchaser means the first person who in good faith purchases a new nonroad engine or new nonroad vehicle or equipment for purposes other than resale.

United States has the meaning given in 40 CFR 1068.30.

§ 1074.10 Scope of preemption.

- (a) States and localities are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new engines smaller than 175 horsepower that are primarily used in farm or construction equipment or vehicles, as defined in this part. For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles (as defined in this part), it is considered farm or construction equipment or vehicles.

- (b) For nonroad engines or vehicles other than those described in paragraph (a) of this section and § 1074.12, States and localities are preempted from enforcing any standards or other requirements relating to control of emissions from nonroad engines or vehicles except as provided in subpart B of this part.

§ 1074.12 Scope of preemption-specific provisions for locomotives and locomotive engines

- (a) States and localities are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives and new engines used in locomotives.
- (b) During a period equivalent in length to 133 percent of the useful life, expressed as MW-hrs (or miles where applicable), beginning at the point at which the locomotive or engine becomes new, those standards or other requirements which are preempted include, but are not limited to, the following: emission standards, mandatory fleet average standards, certification requirements, retrofit and aftermarket equipment requirements, and nonfederal in-use testing requirements. The standards and other requirements specified in the preceding sentence are preempted whether applicable to new or other locomotives or locomotive engines.

Appendix A to Subpart A of Part 1074—State Regulation of the Use and Operation of Nonroad Internal Combustion Engines

- (a) This appendix describes EPA's interpretation of the Clean Air Act regarding the authority of states to regulate the use and operation of nonroad engines.
- (b) EPA believes that states are not precluded under 42 U.S.C. 7543 from regulating the use and operation of nonroad engines, such as regulations on hours of usage, daily mass emission limits, or sulfur limits on fuel; nor are permits regulating such operations precluded, once the engine is no longer new. EPA believes that states are precluded from requiring retrofitting of used nonroad engines except that states are permitted to adopt and enforce any such retrofitting requirements identical to California requirements which have been authorized by EPA under 42 U.S.C. 7543.

[86 FR 34590, June 29, 2021]

Subpart B—Procedures for Authorization

§ 1074.101 Procedures for California nonroad authorization requests.

- (a) California must request authorization from the Administrator to enforce its adopted standards and other requirements relating to control of emissions from nonroad engines or vehicles that are not preempted by § 1074.10(a) or § 1074.12. The request must include the record on which the state rulemaking was based.
- (b) After receiving the authorization request, the Administrator will provide notice and opportunity for a public hearing regarding such requests.

§ 1074.105 Criteria for granting authorization.

- (a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.
- (b) The authorization will not be granted if the Administrator finds that any of the following are true:
 - (1) California's determination is arbitrary and capricious.

- (2) California does not need such standards to meet compelling and extraordinary conditions.
- (3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act (42 U.S.C. 7543).
- (c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

§ 1074.110 Adoption of California standards by other states.

- (a) Except as described in paragraph (b) of this section, any state other than California that has plan provisions approved under Part D of Title I of the Act (42 U.S.C. 7501 to 7515) may adopt and enforce emission standards for any period for nonroad engines and vehicles subject to the following requirements:
 - (1) The state must provide notice to the Administrator that it has adopted such standards.
 - (2) Such standards may not apply to new engines smaller than 175 horsepower that are used in farm or construction equipment or vehicles, or to new locomotives or new engines used in locomotives.
 - (3) Such standards and implementation and enforcement must be identical, for the period concerned, to the California standards authorized by the Administrator.
 - (4) The state must adopt such standards at least two years before the standards first take effect.
 - (5) California must have adopted such standards two years before the standards first take effect in the state that is adopting them under this section.
- (b) States and localities, other than the State of California, may not adopt or attempt to enforce any standard or other requirement applicable to the control of emissions from spark-ignition engines smaller than 50 horsepower, except standards or other requirements that were adopted by that state before September 1, 2003.

§ 1074.115 Relationship of federal and state standards.

If state standards apply to a new nonroad engine or vehicle pursuant to authorization granted under section 209 of the Act (42 U.S.C. 7543), compliance with such state standards will be treated as compliance with the otherwise applicable standards of this chapter for engines or vehicles introduced into commerce in that state.