

ORDINANCE NO. 2022-002

AN ORDINANCE OF THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, CREATING CHAPTER 105 ENTITLED “USE OF GAS-POWERED LEAF BLOWERS” OF THE VILLAGE CODE OF ORDINANCES RELATING TO REGULATIONS ON THE USE OF GAS-POWERED LEAF BLOWERS WITHIN THE VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, North Bay Village (“Village”) is committed to environmental conscientiousness and leadership, and towards that end declares that it is in the best interest of the public health, safety, and welfare of its residents and visitors to reduce litter and pollutants on the land and in the air and waters of the Village; and

WHEREAS, a leaf blower is a widely available gardening tool used to manage leaves, clippings, and other debris; and

WHEREAS, most gas-powered leaf blowers use two-stroke engines, which mix gas and oil; and

WHEREAS, about 30 percent of the gas the engine uses fails to undergo complete combustion, and as a result, the engine emits a number of specific air pollutants of concern, such as: hydrocarbons from both burned and unburned fuel, which combine with other gases in the atmosphere to form ozone, carbon monoxide, fine particulate matter, and other toxic air contaminants in the unburned fuel, including benzene, 1,3-butadiene, acetaldehyde, and formaldehyde; and

WHEREAS, a 2011 test conducted by the car experts at Edmunds showed that a “consumer-grade leaf blower emits more pollutants than a 6,200-pound 2011 Ford F-150 SVT Raptor”; and

WHEREAS, during the test, the company subjected a truck, a sedan, a four-stroke leaf blower, and a two-stroke leaf blower to automotive emissions tests and found that under normal usage conditions - alternating the blower between high power and idle, for example - the two-stroke engine emitted nearly 299 times the hydrocarbons of the pickup truck, 93 times the hydrocarbons of the sedan, and many times as much carbon monoxide and nitrogen oxides as well; and

WHEREAS, the four-stroke engine performed significantly better than the two-stroke in most of the categories, but still far worse than the car engines; and

WHEREAS, in 2017, the California Air Resources Board (“CARB”) issued a warning that by 2020, gas-powered leaf blowers, lawn mowers, and similar equipment in the state could produce more ozone pollution than all the millions of cars in California combined; and

WHEREAS, according to CARB's determination, running a gas-powered leaf blower for one hour emits the same amount of pollution as driving a light-duty passenger vehicle for approximately 1,100 miles; and

WHEREAS, in addition to environmental impacts, air emissions from gas-powered leaf blowers have adverse health effects on workers; and

WHEREAS, counties, cities, and urban areas are in a unique position to combat climate change, because cities and urban areas are responsible for producing 70 percent of climate changing greenhouse gas ("GHG") emissions worldwide; and

WHEREAS, the Village Commission finds that this Ordinance is necessary for the preservation and improvement of the environment, and in the best interest of the public health, safety, and welfare of the Village's residents and visitors.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:¹

Section 1. Recitals. That each of the above recitals are true and correct and incorporated herein by this reference.

Section 2. Creating Chapter 105 of the Village Code. That Chapter 105 of the code of ordinances of North Bay Village, Florida, is hereby created to read as follows:

TITLE IX: - GENERAL REGULATIONS

Chapter 105 – USE OF GAS-POWERED LEAF BLOWERS

Sec. 105.001 Definitions.

The following words, terms, and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Leaf blower means any air blowing device that uses a concentrated stream of air to push, propel, or blow dirt, dust, leaves, grass clippings, trimmings, cuttings, refuse, or debris.

Sec. 105.002 Regulations on the use of leaf blowers.

The use of gas-powered leaf blowers by commercial property owners and multi-family properties is prohibited within the Village. Battery- and electric-powered leaf blowers may be used within the Village, consistent with the regulations set forth in Section 96.02 of the Village Code. Commercial property owners and landscape maintenance companies are

¹ Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~double-strikethrough~~ and double underline.

encouraged to operate leaf blowers in a manner that reduces noise generated by the equipment, including, without limitation, by not continuously running equipment and by using equipment that operates at a low decibel range (i.e. 65 dB or less). The regulations set forth in this Chapter shall also apply to private use of gas-powered leaf blowers by single family owners or occupants.

Sec. 105.003. Temporary suspension for storm and hurricane cleanup.

In the event of a hurricane, tropical storm, or similar extreme weather event, the Village Manager, in the Village Manager's sole discretion, may temporarily suspend provisions of this Chapter to permit the use of gas-powered leaf blowers for debris cleanup.

Sec. 105.004. Enforcement: penalties.

- (a) Beginning on March 1, 2022, and extending through November 30, 2022, the Village shall engage in public education efforts to inform residents and landscape maintenance companies of the provisions of this Chapter and to provide assistance with identifying alternatives to gas-powered leaf blowers.
- (b) Beginning on December 1, 2022, the Village shall provide for a nine-month warning period through and including August 31, 2023, during which the Code Enforcement Division shall issue written warnings for violations of this Chapter.
- (c) Beginning on September 1, 2023, the Code Enforcement Division shall fully enforce the provisions of this Chapter.
- (d) If a code enforcement officer finds a violation of this Chapter, the code enforcement officer shall issue a notice of violation. The notice shall inform the violator of the nature of the violation amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten days after service of the notice of violation, and that the failure to appeal the violation within ten days of service shall constitute an admission of the violation and a waiver of the right to a hearing.
- (e) A violator who has been served with a notice of violation must elect to either: ~~or~~
 - (1) Pay the following civil fine:
 - a. First violation within a 12-month period . . . \$50.00;
 - b. Second violation within a 12-month period . . . \$100.00;
 - c. Third or subsequent violation within a 12-month period . . . \$500.00;

or

- (2) Request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten days of the service of the notice of violation. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in Section 153.03 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the Village Commission, which shall be refunded if the named violator prevails in the appeal.
- (f) Failure to pay the civil fine, or to timely request an administrative hearing before a special master, shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.
- (g) A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. After three months following the recording of any such lien that remains unpaid, the Village may foreclose or otherwise execute upon the lien for the amount of the lien plus accrued interest.
- (h) The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten days of the service of the notice of violation. The special master shall not have discretion to alter the penalties prescribed in this Chapter. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

Sec. 100.005. Financial hardship waiver.

~~Any commercial property owner or principal of a landscape maintenance company, any owner of a multiple family property or single family homeowner or occupant reporting an annual gross income of 80% of the area median income, or less on its income tax filing for the most recent tax year, may submit a written request to the Village Manager, on a form prepared by the Village Manager, for a financial hardship waiver of the requirements of this Chapter. The Village Manager may grant a waiver if the property owner or landscape maintenance company provides evidence of the following:~~

- ~~(a) There is no comparable alternative product that does not use gas to power up leaf blowers; or~~
- ~~(b) The purchase or use of an alternative product would create an undue financial hardship.~~

~~Such financial hardship waiver shall be valid for 12 months and may be renewable upon application to the Village Manager. If an administrative hearing is requested~~

~~pursuant to subsection 105.004(e)(2), a pending financial hardship waiver request shall be grounds for a continuance of the administrative hearing, but only if the notice of violation was issued after the submittal of the financial hardship waiver request.~~

Section 3. Severability. That the provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

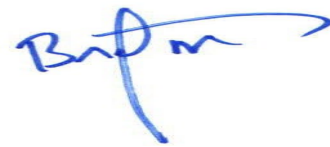
Section 4. Codification. That it is the intention of the Village Commission and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

Section 5. Conflicts. That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

Section 6. Effective Date. That this Ordinance shall become effective immediately upon final adoption on second reading.

PASSED on first reading on the 17th day of February, 2022.

PASSED AND ADOPTED on second reading on the ____ day of _____, 2022.



Brent Latham, Mayor

ATTEST:



Acting Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



Haydee Serota
Weiss Serota Helfman Cole & Bierman, PL
Village Attorney

First Reading:

Moved By: Commissioner Richard Chervony

Seconded By: Vice Mayor Marvin Wilmoth

Second Reading:

Moved By: Commissioner Chervony

Seconded By: Vice Mayor Wilmoth

Vote on Final Adoption:

Mayor Brent Latham	<u>yes</u>
Vice Mayor Marvin Wilmoth	<u>yes</u>
Commissioner Richard Chervony	<u>yes</u>
Commissioner Rachel Streitfeld	<u>yes</u>
Commissioner Julianna Strout	<u>absent</u>