



MEETING DATE: 05/03/16
ITEM NO: 9

COUNCIL AGENDA REPORT

DATE: APRIL 28, 2016

TO: MAYOR AND TOWN COUNCIL

FROM: ROBERT SCHULTZ, TOWN ATTORNEY

SUBJECT: ADOPT AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING SECTION 18.60.10 TO INCLUDE RESTRICTIONS ON SMOKING IN COMMERCIAL ZONED AREAS AND IN MULTI-UNIT RESIDENCES AND OTHER MISCELLANEOUS EDITS

RECOMMENDATION:

Staff recommends that Town Council accept public comment and then move for introduction and first reading of an Ordinance, by title only, amending Section 18.60.10 to the Los Gatos Town Code.

INTRODUCTION:

One of the 2015-2016 Strategic Goals and Priorities of the Town Council is to update the Town's Smoking Regulations, last revised some 25 years ago. Since September 2015, the Town Attorney's Office has been working with the Los Gatos Youth Commission on proposed amendments to the Town's Smoking Regulations. The amendments to the Town's smoking regulations proposed by the Youth Commission come in the context of greater scientific understanding of the dangers of secondhand and thirdhand smoke and the continued drop in the percentage of adult smokers in the Bay Area. The proposed amendments to the Town's Smoking Regulations formulated by the Youth Commission include provisions for prohibiting smoking in public places, commercial areas, and multi-unit residences. All of these proposals have already been adopted by one or more jurisdictions within the Bay Area.

BACKGROUND:

California has long been considered a pioneer with its statewide initiatives to reduce the harmful effects of smoking. The 1988 passage of Proposition 99, the Tobacco Tax and Health Protection Act, imposed a 25 cent per pack cigarette tax and created statewide programs to reduce smoking.

PREPARED BY: Robert Schultz, Town Attorney

Reviewed by: _____ Assistant Town Manager _____ Town Attorney _____ Finance

BACKGROUND (continued):

By 1993, local jurisdictions throughout the state had enacted smoke-free workplace ordinances that protected nearly two-thirds of California workers. The success of local tobacco control legislation helped inform the 1994 creation and passage of Assembly Bill (AB) 13, the California Smoke-Free Workplace Act. This landmark bill created a 100% smoke-free environment for most work places.

The passage of AB 13 was heralded as a groundbreaking replacement for a “patchwork of local laws,” but it was also criticized for its negative effect upon local tobacco control initiatives because it was limited to workplace protections. In addition, its passage created the perception that local legislation was no longer necessary. In researching this issue, staff and the Youth Commission discovered that many cities over the last several years have started to implement additional protections beyond those provided by state law.

DISCUSSION:

Local governments that have chosen to enact tobacco control ordinances that are stronger than the protections provided by the state have generally focused their protections on three areas:

1. Protections for indoor or enclosed work places;
2. Protections for outdoor public places; and
3. Secondhand smoke housing policies.

The Youth Commission decided to extend the protections under the Town’s ordinance to all three of these areas. Staff and the Youth Commission relied on several sources to compile information and in making their recommendations for proposed changes to our smoking ordinance including the Public Health Law and Policy’s Technical Assistance and Legal Center, the American Lung Association’s Center for Tobacco Policy and Organizing, and the County’s Tobacco Control Program.

Protections for Indoor or Enclosed Work Places

AB 13, codified in Labor Code section 6404.5, prohibits smoking in most indoor work places, but exempts certain work place environments. Most other towns and cities have acted to extend protections to cover these areas. The proposed ordinance would eliminate the exemptions to cover all enclosed work place environments, as well as other enclosed places that are open to the public.

All of the proposed prohibitions on smoking are listed in Section 1218.60.010. Some of the examples of enclosed public or workplace environments where protections would be extended include:

- Private residences used as licensed child care and health care facilities

DISCUSSION (continued):

- Buses, Taxi cabs, and rideshare vehicles
- Tobacco retailers/smoking lounges/hookah bars
- Truck cabs
- Hotel lobbies, rooms and grounds
- Restrooms and Banquet rooms
- Warehouse facilities
- Places of Employment
- Public places such as sports arenas or convention halls
- Shopping Malls
- Polling Places

Protections for Outdoor Public Places

There are numerous studies concluding that secondhand smoke is harmful to individuals, including a report from the California Air Resources Board declaring secondhand smoke as a toxic air contaminant, and a report from the U.S. Surgeon General stating that there is no risk-free level of exposure to secondhand smoke. A 2007 study conducted by researchers from Stanford University found that outdoor secondhand smoke exposure can be comparable to indoor secondhand smoke levels when an individual is near a smoker outdoors. Many cities throughout the state have used these compelling healthcare studies as the basis for implementing additional regulations related to secondhand smoke to outdoor public places. Eighty-three cities and counties in California have passed what are considered to be comprehensive outdoor secondhand smoke ordinances.

The Youth Commission's proposed ordinance establishes a very comprehensive outdoor secondhand smoke ordinance that uses a "listing approach," that targets key outdoor areas for protection. The areas targeted for protection under the proposed ordinance include:

1. Dining areas: defined as all indoor and outdoor seating at restaurants, bars, etc.
2. Entryways (reasonable distance): defined as within (30) feet of any smoke free area, building or building entrance, window, opening or vent into an enclosed area in which smoking is prohibited a certain distance from doors, windows, and other openings into enclosed areas.
3. Public events: defined as farmers' markets, parades, concerts, etc.
4. Recreation areas: defined as parks, trails, sports fields, etc.
5. Service areas: defined as bus stops, ticket lines, ATM lines, taxi stands, etc.
6. Commercial District: defined as C-1, C-2, C-H, CM and LM accessible to the general public, including sidewalks, streets, and parking areas,

Other provisions that are included in an ordinance regulating smoking in public places include:

- Requiring that No Smoking signs be posted.

DISCUSSION (continued):

- Prohibiting the placement of ash cans and ashtrays.
- Requiring commercial property owners and managers to prevent patrons and guests from illegally using tobacco on their premises.

Secondhand Smoke Housing Policies

Smoke in multi-unit housing poses health problems for non-smoking residents through the drifting of smoke from neighboring units, balconies, and outdoor spaces. The Surgeon General has determined that the dangers from secondhand smoke cannot be controlled by ventilation, air cleaning, or the separation of smokers from non-smokers. Several studies have concluded that smoking in multi-unit housing also contributes to higher maintenance and insurance costs. Many cities in California have begun to address the health dangers and additional costs related to secondhand smoke by implementing secondhand smoke housing policies. As of January 2011, 101 communities in California have adopted some form of secondhand smoke housing policy.

Restricting smoking within individual rental units was an important consideration for the Youth Commission when drafting the proposed ordinance. The American Lung Association supports prohibiting smoking in 100% of multi-unit rental housing due to the public health impacts of secondhand smoke. The proposed ordinance includes a prohibition on smoking within multi-unit residences and within thirty feet of any common areas and requires no smoking lease terms in rental agreements.

Exception

The proposed ordinance does allow an owner of private property to designate a Town approved area where smoking is permitted in a location where smoking would otherwise be prohibited, so long as it is as small as is practicable to accommodate the number of smokers that are expected to use the area and is located a minimum of 30 feet from any structure where smoking is prohibited.

CONCLUSION:

We recommend Council review and move for first reading and introduction of the attached Ordinance by title only. Please feel free to ask questions or make any changes you feel appropriate.

ENVIRONMENTAL ASSESSMENT:

It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act (Section 15061 (b) (3)).

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FISCAL IMPACT:

The adoption of this ordinance will result in a fiscal impact for the cost and installation of no smoking signs. In addition, the Town will need to replace or modify trash receptacles that also serve as ashtrays in locations where smoking is proposed to be prohibited.

Attachment:

1. Draft Ordinance