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

DESK ITEM

COUNCIL AGENDA REPORT

DATE: May 3, 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

DISCUSSION:

Attached is a revised ordinance that corrects typographical grammar errors. There are no substantive changes from the original ordinance and the revised ordinance.

Attachment 1 (Previously submitted with Staff Report on April 28, 2016):
1. Draft Ordinance

Attachment received with this Desk Item:
2. Revised Draft Ordinance

PREPARED BY: Robert Schultz, Town Attorney

Reviewed by: LRP Town Manager N/A Assistant Town Managaer N/A Finance

ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING SECTION 18.60.010 TO INCLUDE RESTRICTIONS ON SMOKING IN COMMERIAL ZONED AREAS AND IN MULTI-UNIT RESIDENCES AND OTHER MISCELLANEOUS EDITS.

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, as evidenced by the following:

- 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the nation's leading cause of preventable death[1]; and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths[2]; and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke[3]; and
- The California Air Resources Board has placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure [4 5]; and
- The California Environmental Protection Agency (EPA) has included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm[6]; and

WHEREAS, any exposure to secondhand smoke has negative health impacts, and exposure to secondhand smoke occurs at significant levels outdoors, as evidenced by the following:

- Levels of secondhand smoke exposure outdoors can reach levels attained indoors depending on direction and amount of wind and the number and proximity of smokers[7], and
- Smoking cigarettes near building entryways can increase air pollution levels by more than twice background levels, with maximum levels reaching the "hazardous" range on the United States EPA's Air Quality Index[8]; and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 23 feet away from the source of the smoke, about the width of a two-lane road[9]; and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Since 1964, approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke;[10] and
- Secondhand smoke is responsible for an estimated 41,300 heart disease-related and lung cancer-related deaths among adult nonsmokers each year in the United States[11]; and
- Exposure to secondhand smoke increases the risk of coronary heart disease by about 25-30 percent and increases the risk of stroke by 20-30 percent;[12] and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, as evidenced by the following:

- Between 2009 and 2012, the total annual economic burden of smoking in the United States was between $289 billion and $332.5 billion;[13] and
- From 2005 to 2009, the average annual health care expenditures attributable to smoking were approximately $132.5 billion to $175.9 billion in direct medical care costs for adults and $151 billion in lost productivity; and
- The total annual cost of smoking in California was estimated at $548 per resident or between $2,262 and $2,904 per smoker per year; and
- California's Tobacco Control Program saved the state and its residents $134 billion in health care expenditures between the year of its inception, 1989, and 2008, with savings growing yearly;[14] and

WHEREAS, laws restricting the use of tobacco products have recognizable benefits to public health and medical costs as documented in over 80 peer-reviewed research studies showing that smokefree policies effectively do the following:

- Reduce tobacco use: tobacco use is reduced by median of 2.7 percent; and
- Reduce exposure to secondhand smoke: air pollution is reduced by a median of 88 percent and biomarkers for secondhand smoke are reduced by a median of 50 percent; and
- Increase the number of tobacco users who quit by a median of 3.8 percent; and
- Reduce initiation of tobacco use among young people; and
- Reduce tobacco-related illnesses and death: there is a 5.1 percent median decrease in hospitalizations from heart attacks and a 20.1 percent decrease in hospitalizations from asthma attacks after such laws are passed;[15] and

WHEREAS, laws restricting electronic smoking devices use also have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm,[16] [17] [18] such as formaldehyde, acetaldehyde, lead, nickel, and toluene are contained in electronic smoking devices;[19] [20] [21] and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping;[22] and
- The use of electronic smoking devices in smokefree locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment;[23] and
- The State of California's Tobacco Education and Research Oversight Committee (TEROC) "opposes the use of e-cigarettes in all areas where other tobacco products are banned;"[24] and

WHEREAS, cigarette butts are a major and persistent source of litter, as evidenced by the following:

- In 2007, it was estimated that Americans consume 360 billion cigarettes each year;[25] [26] and
- 55.7 percent of smokers admit to littering cigarettes in the last month;[27] and
- In an observational study of nearly 10,000 individuals, after cigarettes were smoked, 45 percent of cigarettes ended up as litter; and
- In 2011, 22.6 percent of all debris collected from beaches and coastal areas are smoking related products; and
- Cigarette butts are often cast onto sidewalks and streets, and frequently end up in storm drains that flow into streams, rivers, bays, lagoons, and ultimately the ocean;[28] [29] and

WHEREAS, cigarette butts pose a health threat to young children, as evidenced by the following:

- In 2012, American poison control centers received nearly 8,648 reports of poisoning by the ingestion of cigarettes, cigarette butts, and other tobacco products and 84.5 percent of these poisonings were in children ages five and younger;[30] and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging;[31] and

WHEREAS, though widely perceived as a comprehensive smokefree air law, exemptions and loopholes in the California Smokefree Workplace Act[32] mean that one in seven Californians faces secondhand smoke exposure at work[33]; and

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smokefree air laws, as evidenced by a 2008 survey of California voters, which found that 97 percent thought that secondhand smoke is harmful, 88 percent thought secondhand smoke was harmful even outdoors, 65 percent were bothered by secondhand smoke, and 73 percent support laws restricting smoking in outdoor public places;[34] and

WHEREAS, as of April 2015, there are at least 64 California cities and counties with local laws restricting smoking in workplaces not covered by the state smokefree workplace law;[35] and

WHEREAS, as of April 2014, at least 131 local jurisdictions in California prohibit the use of electronic smoking devices in specific locations;[36] and

WHEREAS, as of January 2015, there are at least 348 California cities and counties with local laws restricting smoking in recreational areas, 129 with local laws restricting smoking in outdoor dining places, and 48 with local laws restricting smoking on sidewalks in commercial areas;[37] and

WHEREAS, nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

- Several peer-reviewed studies on drifting secondhand smoke in multi-unit housing have confirmed that secondhand smoke can and does transfer between units, creeping under doorways and through wall cracks;[38]
- More than one study has found that residents of multi-unit housing have high levels of cotinine (a biomarker for nicotine) in their blood and saliva;[39] [40]

- 13 peer-reviewed journal articles have found that between 26-64 percent of residents of multi-unit housing report secondhand smoke drifting into their home; and

WHEREAS, harmful residues from tobacco smoke can be absorbed by and cling to virtually all indoor surfaces long after smoking has stopped and then be emitted back into the air, making this "thirdhand smoke" a potential health hazard, as evidenced by the following:

- Thirdhand smoke contains carcinogenic materials that accumulate over time, presenting a health hazard long after the initial smoke is gone;[41]
- A study found that thirdhand smoke remains months after nonsmokers have moved into units where smokers previously lived;[42]
- Human exposure to these thirdhand smoke carcinogens can occur through inhalation, ingestion, or skin absorption through contact with carpeting, furnishings, or clothing;[43]
- Thirdhand smoke potentially poses the greatest danger to infants and toddlers, who crawl on rugs and furnishings and suck on items in the home;
- Nonsmoking people who are exposed to thirdhand smoke have significantly higher nicotine and cotinine levels than those who have not been exposed to thirdhand smoke;
- Research has shown that thirdhand smoke damages human cellular DNA;[44] and

WHEREAS, smoking is the number one cause of fire-related deaths, is a leading cause of fire-related injury,[45] and contributes to fire-related health inequities, as evidenced by the following:

- In 2011, U.S. fire departments responded to an estimated 90,000 smoking-related fires, which resulted in an estimated 1,640 injuries, 540 deaths, and $621 million in direct property damage;[46]
- One in four fatalities occurring as a result of a smoking related fire is not the smoker whose cigarette started the fire, and 25 percent of those who die are neighbors or friends of the smoker;
- The elderly (people 85 and older) have the highest fire death rate (49.2%),[47] and the risk of dying from smoking-related fires increases with age;
- The U.S. Fire Administration recommends that people smoke outdoors;[48] and

WHEREAS, the Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure;[49] and

WHEREAS, several studies have confirmed that smokefree multi-unit housing policies are the most effective method to fully reduce secondhand smoke exposure in multi-unit housing; and

WHEREAS, 32 percent of Californians (or 11.8 million people) live in multi-unit housing,[50] which accounts for one-seventh of the total multi-unit housing population in the country; and

WHEREAS, between 44-46.2 percent of Californians living in multi-unit housing with personal smokefree home policies are exposed to secondhand smoke in their home; and

WHEREAS, surveys have found that between 65-90 percent of multi-unit housing residents who experience secondhand smoke in their home are bothered by the secondhand smoke incursion; and

WHEREAS, secondhand smoke exposure in multi-unit housing contributes to tobacco-related health inequities. For example, when compared with adults who live in single family homes, adults who live in multi-unit housing are more likely to:

- Be from communities of color (62.9% of residents of multi-unit homes versus 49.6% of residents of single family homes);
- Be low-income or below the poverty line (46.8% versus 27%);
- Have less than a high school diploma (21.4% versus 14.8%);
- Be current smokers (17.5% versus 13.2%);
- Be uninsured (23.4% versus 14.2%);[51] and

WHEREAS, secondhand smoke in multi-unit housing is a significant threat to the health and safety of California children, as evidenced by the following:

- About a quarter of those who live in multi-unit housing (25.2%) are under the age of 18;
- The home is the primary source of secondhand smoke for children;
- 56.4 percent of youth living in apartment units in which no one smokes have elevated blood cotinine levels above 0.05 ng/mL, indicating they have been exposed to potentially dangerous levels of secondhand smoke;
- Children who live in apartments have mean cotinine levels that are 45 percent higher than cotinine levels in children who live in detached homes; and

WHEREAS, a majority of multi-unit housing residents, including a large portion of smokers, support smokefree policies in multi-unit residences, as evidenced by the following:

- 74 percent of Californians surveyed approve of apartment complexes requiring that at least half of rental units be nonsmoking;
- 69 percent of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings;
- 78 percent support laws that create nonsmoking units;[52] and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California law;[53] and

WHEREAS, at least 55 California cities and counties have adopted smokefree multi-unit housing ordinances,[54] and at least 25 of these jurisdictions have restricted smoking in 100 percent of units;[55] and

WHEREAS, there is no Constitutional right to smoke;[56]

WHEREAS, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking around non-tobacco users, especially children, to protect the public from exposure to secondhand smoke where they live, work, and play, and to protect the public from nonconsensual exposure to secondhand smoke in and around their homes

the Town of Los Gatos amends and adds new sections to the Los Gatos Town Municipal Code Section 18.60.010 relating to smoking in commercial zones, within multi-family housing, smoking distance from doors, windows and similar openings, and outdoor dining establishments.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS FOLLOWS:

SECTION I.

Los Gatos Town Code Article VI – Smoking Regulations Section 18.60.010 is hereby amended, added and renumbered to read as follows:

Sec. 18.60.010. - Smoking in public places, residences and places of employment.

(a) Findings and purpose. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand and thirdhand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are minors, elderly people, pregnant women, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Additionally, studies have found a number of dangerous chemicals in electronic smoking devices emissions and cartridge contents. At least ten (10) chemicals listed as carcinogens and reproductive toxins have been identified in mainstream or secondhand e-cigarette aerosol.

Health hazards induced by breathing secondhand smoke/e-cigarette vapor and being in smoking environments include lung and other cancer, heart disease, respiratory infection, decreased respiratory function, birth defects, asthma, bronchoconstriction, ~~and~~ bronchi-spasm and ear infections.

Since there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety.

Accordingly, the Town Council finds and declares that the purposes of this section are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe ~~smoke-free~~smokefree and non-toxic air, and to recognize that the need to breathe ~~smoke-free~~smokefree air shall have priority over the desire to smoke.

(b) Definitions. For the purposes of this section, the following definitions shall apply:

(1) Bar: A place not accessory to an eating establishment which serves alcoholic beverages for consumption on-site to the general public in which the serving of food is incidental to the consumption of such beverages.

(2) Eating establishment: Any restaurant, coffee shop, cafeteria, soda fountain, ~~cafe~~café, market or other establishment ~~primarily~~ engaged in serving food and/or beverages, for dining in or out, to the general public, even if such use is not primary to the business.

~~(3) Eating establishment bar: A place located in the same building as and accessory to an eating establishment which serves alcoholic beverages for consumption on-site to the general public in which the serving of food is incidental to the consumption of such beverages:~~

~~a. Which is ventilated by a separate system with direct external exhaust; and~~

~~b. Is negatively pressured; and~~

~~c. Either:~~

~~(i) Is physically separated from the eating area by a barrier of solid construction in which any opening is equipped with self-closing doors which prevent the passage of smoke when closed; or~~

~~(ii) In the opinion of the Director of Building Services, has incorporated sufficient alternative precautions to prevent smoke from entering other areas.~~

(3) Electronic smoking device: Includes any such device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of vapors including nicotine or other substances. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

(4) Employee: Any person who is employed or retained as an independent contractor by an employer in consideration for direct or indirect monetary wages or profit. Also includes any person who volunteers his or her services to such and employer.

(5) Employer: Any person or corporation including public agencies who employs the services of an individual person for compensation for services to be rendered.

(6) Enclosed public place: A public space enclosed on all sides by walls, partitions, windows, or similar barriers (exclusive of ingress/egress) open to the general public, including but not limited to retail buildings, restaurants, theaters, museums, art galleries and similar structures.

(7) Existing unit: Any unit that is not a new unit.

(8) Medical care facility: Any health facility as defined in Section 1200 or 1250 of the Public Health and Safety Code, or any facility in which a physician provides health care to patients.

(9) Multi-unit residence: A rental complex that contains two or more units. A multi-unit residence does not include property owned by the state or federal government or the following specifically excluded types of housing: (1) A hotel or motel; (2) A mobile home park; (3) A single-family home; and (4) A single-family home with a detached or attached in-law or second unit when permitted pursuant to CA Government Code sections 65852.1, 65852.150, and 65852.2, or an ordinance of the Town adopted

pursuant to those sections. A single-family house shared by roommates is not a multi-unit residence for purposes of this chapter.

(10) Multi-unit residence common area: Any indoor or outdoor common area of a multi- unit residence accessible to and usable by more than one residence, including but not limited to, courtyards, halls, lobbies, parking garages and parking areas, gardens, laundry rooms, outdoor eating areas, play, exercise, and swimming areas.

(11) New unit means a unit that is issued a certificate of occupancy after enactment of this ordinance, and also means a unit that is let for residential use for the first time after the enactment of this ordinance.

(12) No smoking sign: A sign in letters not less than one (1) inch in height printed on a contrasting background which states that smoking is not allowed or a sign which displays the international no-smoking symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

(13) Nonprofit Entity: Any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association, or other entity created for charitable, religious, philanthropic, educational, political, social, or similar purposes, the net proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A government agency is not a Nonprofit Entity within the meaning of this section.

(14) Place of Employment: Any area under the legal or de facto control of an Employer that an Employee or the general public may have cause to enter in the normal course of the operations, regardless of the hours of operation.

(15) Public building: Any building or portion thereof owned or leased by the Town or any local government entity subject to Town zoning requirements.

(16) Public place: Any area to which any member of the public is invited, or in which any member of the public is permitted, including, but not limited to, recreational areas, public transportation facilities, reception areas, restaurants, restaurant/bar combinations, bars, retail stores, retail service establishments, retail food production and marketing establishments, waiting rooms, service clubs, public or private cafeterias, or any workplace or work areas.

(17) Rental complex: A property for which 50 percent or more of units are let by or on behalf of the same landlord.

(18) Reasonable Distance: means a distance of thirty (30) feet in any direction from an area, both enclosed and unenclosed, in which Smoking is prohibited.

(19) Retail tobacco store: A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is only incidental.

(20) Service Area: means any publicly or privately owned area, including streets and sidewalks that is designed to be used or is regularly used by one or more Persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "Service Area" includes but is not limited to areas including or adjacent to information kiosks,

automatic teller machines (ATMs), ticket lines, bus stops or shelters, mobile vendor lines, or cab stands.

(21) Smoking: Includes: (1) The act of inhaling/exhaling, burning or carrying any lighted tobacco product or by-product including cigarettes, cigars, pipes and hookahs that burn tobacco or other weed or plant material including Cannabis sativa (marijuana), even if medically indicated and/or permitted; or (2) Operating using an electronic smoking device or any other nicotine delivery product.

(22) Thirdhand smoke: residual tobacco contamination that results from off-gassed tobacco products left behind, after smoking occurs, and builds up on surfaces and furnishings.

(23) Tobacco Product: means (1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether Smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and (2) Any Electronic Smoking Device. Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(24) Unit means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area, such as, for example, a private balcony, porch, deck, or patio. "Unit" includes without limitation: an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family home; a room in a single-family home; and an in-law or second unit. Unit includes a new unit.

(25) Workplace: Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways.

(c) Prohibition of smoking ~~in public places.~~

(1) Smoking shall be prohibited in ~~all enclosed public places open to the general public~~ the following enclosed and unenclosed places within the Town of Los Gatos ~~including but not limited to the following places~~:

a. Elevators and restrooms.

b. Within Public buildings, libraries, Town Hall, and outdoors within 30 feet of buildings owned, leased, or operated by the Town of Los Gatos or any other public entity.

c. Medical health facilities and offices.

d. Eating establishments including all indoor and outdoor eating and seating areas.

~~(i) After January 1, 1992 in all but twenty-five (25) percent of the seating;~~

~~(ii) After January 1, 1993 in all seating.~~

e. Retail stores (except retail tobacco stores as permitted below).

f. Theaters, auditoriums, museums and art galleries.

g. Hotels and motels, including all enclosed and unenclosed property areas, garages, parking areas, common areas, gardens, and patios, balconies, decks, and terraces even if associated with individual rooms.

h. Buses, taxicabs any rideshare vehicle, such as Uber or Lyft or a similar service, and other means of public transit, and ticket, boarding and waiting areas of public transit depots.

i. Public recreational areas including all Town and Santa Clara County parks, sports fields, and trails, and in any parking area associated therewith.

j. Bars, taverns, lounges, nightclubs and dance clubs.

k. Service areas and service lines such as laundromats, gas stations, ATM and ticket lines..

l. Places of employment whether business or nonprofit entities.

m. Other enclosed or unenclosed Public Places, when being used for a public event, including but not limited to farmer's market, parade, craft fair, concerts, or any event which may be attended by the general public.

n. All areas in Town Commerical Zones C-1, C-2, C-H, CM and LM accessible to the general public, including sidewalks, streets, and parking areas. Multiple signs decalring the area smokefree must be provided as appropriate to ensure that signs are readily visible to all users of the area.

o. Within thirty (30) feet of any smokefree area, building or building entrance, window, opening or vent into an enclosed area in which smoking is prohibited.

p. Any facility licensed for childcare, family day care, health care, or community care even when unoccupied.

q. Transportation vehicles of any kind, including cars, bicycles, motorcycles, truck cabs or truck tractors, when minors being transported.

r. Polling places.

s. Shopping malls.

t. All Town owned and operated vehicles wherever located.

u. Within one hundred (100) feet of all school buildings and grounds, on both public and private property, provided, however, that the provisions of this subdivision shall not apply to smoking in a residence, or within real property boundary lines of residential real property.

(d) Regulation of smoking in multi-unit residences

(1) Smoking prohibited in new and existing units of multi-unit residences.

a. Smoking is prohibited in any new unit of a multi-unit residence.

b. Beginning twelve (12) months after the effective date of this ordinance, smoking —is prohibited in any existing unit of a multi-unit residence.

(2) Smoking is prohibited in enclosed and unenclosed Common Areas.

(3) Smoking is prohibited within 30 feet in any direction of any doorway, window, opening, or vent, and within 30 feet in any direction of an unenclosed Common Area of a Multi-Unit Residence.

(4) Every lease or other rental agreement for the occupancy of a new unit or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month shall include the following:

a. A clause providing that it is a material breach of the agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to:

(i) Smoke or use an electronic smoking device in any common area of the property other than a designated smoking area;

(ii) Smoke in a new unit;

(iii) Smoke in an existing unit starting twelve (12) months after the effective date of this ordinance; or

(iv) Violate any law regulating smoking or use of electronic smoking device anywhere on the property.

b. A clear description of all areas on the property where smoking or the use of electronic smoking devices is allowed or prohibited.

c. A clause expressly conveying third-party beneficiary status to all tenants of the multi-unit residence as to provisions of the agreement concerning smoking and the use of electronic smoking devices. Such clause shall provide that any tenant of the multi-unit residence may sue another tenant to enforce these provisions of the agreement but that no tenant shall have the right to evict another tenant for a breach of any such provision of the agreement.

(5) Whether or not a landlord complies with subsection 4. above, the clauses required by that subsection shall be implied and incorporated by law into every agreement to which subsection 4, applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection 4.

(6)This chapter shall not create liability in a landlord to any person for a tenant's breach of any provision concerning smoking or the use of electronic smoking -devices in a lease or other rental agreement for the occupancy of a unit in a – multi-unit residence if the landlord has fully complied with this section.

(7). Failure to enforce any lease or rental agreement provision required by this chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

(e) Prohibition of smoking in outdoor places of employment

(1) Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.

(f) Other requirements and prohibitions.

(1) No ash can, ashtray, or other smoking waste receptacle shall be placed in any area in which smoking is prohibited by this chapter.

(2) No person shall knowingly permit smoking in an area under the person's legal or de facto control in which smoking is prohibited by this chapter or other provisions of this code, unless otherwise required by state or federal law.

(3) No person shall dispose of used smoking waste within the boundaries of an area in which smoking use is prohibited by this chapter.

(4) "No smoking" or "smokefree" signs shall be posted in a quantity and manner reasonably likely to inform individuals occupying the smokefree area that smoking is prohibited within the area. The signs shall have letters of no less than one inch in height and shall include the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar).

(5) The presence of smoking waste receptacles in violation of subsection 1, above and the absence of signs required by subsection 4, above shall not be a defense to a violation of any provision of this chapter.

(6). No person shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

(g) Exceptions. Nothing in this section shall be construed to restrict smoking in the following areas, except as described below:

(1) Retail tobacco stores and private membership smoking clubs. To qualify such entities must be detached from other structures and maintain a non-shared ventilation system;

(2) Private residences (except when used as a child care facility, medical care facility, or community care facility, even when unoccupied);

(3) A workplace not open to the public with only one employee in an unattached building and with a non-shared ventilation system.

(4) For a theatrical production site, if smoking is an integral part of the story in the theatrical production, an e-cigarette may be utilized.

(5) When the purpose of inhalation is solely olfactory, such as, for example, smoke from incense.

(6) Private transportation vehicles without minors.

(7) Designated smoking areas. The owner or operator with control over any privately-owned property may designate an area where smoking is permitted in a location where smoking would otherwise be prohibited under this article, provided that the smoking area:

a. Is as small as is practicable to accommodate the number of smokers that are expected to use the area. Notwithstanding these criteria, an owner may not designate a smoking area that would be smaller than fifty (50) square feet, or with a dimension on any side less than five 5) feet.

b. Is located a minimum of 30 feet from any structure where smoking is prohibited.

c. If enclosed, the structure shall be equipped with a separate ventilation system that vents smoke through the roof.

d. Is posted with one or more conspicuously displayed signs that identify the area as a designated smoking area.

e. Is approved by the Town.

~~(d) Regulation of smoking in the private workplace.~~

~~(1) Within ninety (90) days of the effective date of the ordinance from which this section derives, each employer shall adopt, implement, and maintain a written smoking policy relating to smoking in the work place which shall contain at a minimum the following:~~

~~a. Prohibition of smoking in conference and meeting rooms, classrooms, auditoriums, restrooms, hallways, and elevators.~~

~~b. Provisions and maintenance of a contiguous no-smoking area of not less than two-thirds of the seating capacity and floor space in each cafeteria or lunchroom. Smoking areas shall be physically separated and separately ventilated.~~

~~c. Provisions and maintenance of a contiguous no-smoking area of not less than two-thirds (2/3) of the seating capacity and floor space in each employee lounge or, at the discretion of the employer, where there is more than one (1) such lounge in any one (1) building, not less than one-half (½) the number of such lounges and not less than one-half (½) the square footage of such lounges. Smoking areas shall be physically separated and ventilated.~~

~~d. Any employee in the private work place shall be given the right to designate his or her immediate area as a nonsmoking area and to post it with appropriate signs or sign. The policy adopted by the employer shall include a definition of the term immediate work area which gives preferential consideration to nonsmokers.~~

~~e. In any dispute arising under the smoking policy, the rights of the nonsmoker shall be given precedence.~~

~~(e) Exceptions. Nothing in this section shall be construed to restrict smoking in the following areas, except as described below:~~

~~(1) Retail tobacco stores;~~

~~(2) Private residences (except when used for family day care);~~

~~(3) Closed banquet, conference or meeting rooms of hotels, motels and lodges except that a no smoking area must be provided for nonsmokers;~~

~~(4) Any property owned or leased by other governmental agencies which is not subject to the Town's zoning authority;~~

~~(5) Bars;~~

~~(6) Eating establishment bars;~~

~~(7) Private hotel and motel rooms:~~

~~(i) After January 1, 1992, a maximum of fifty (50) percent may be dedicated as smoking rooms;~~

~~(ii) After January 1, 1993, a maximum of thirty-three and one-third (33 1/3) percent may be dedicated as smoking rooms.~~

~~(f) Posting signs. No smoking signs shall be clearly and conspicuously posted in every building or other place where smoking is regulated by this section, by the owner, operator, manager or other person having control of such building or other place.~~

(h) Smoking—Penalties.

(1) Any violation of this chapter is declared to be a public nuisance.

(2) Any person who violates this section by failing to post signs or failing to establish required policies and procedures, is guilty of a violation of the Town Code and subject to a civil penalty of one hundred dollars ($100.00) for the first offense, two hundred dollars ($200) for the second offense, and five hundred dollars ($500) for the third and subsequent offenses in addition to the cost of enforcing this section which shall include all costs, staff and attorney time.~~and the cost of enforcing this section which shall include all costs, staff and attorney time~~. Such persons shall be deemed to have committed a separate offense for each and every day during any portion of which any violation occurs or is ~~of this section is committed or~~ permitted to occur.

(3) Any person who smokes where smoking is prohibited when signs are posted in the required manner is guilty of an infraction and subject to a civil penalty of one hundred dollars ($100) for the first offense, two hundred dollars ($200) for the second offense, and five hundred dollars ($500) for the third and subsequent offenses, in addition to the cost of enforcing this section which shall include all costs, staff and attorney time. Such persons shall be deemed to have committed a separate offense for each and every day during any portion of which any violation of this section is committed or permitted.

SECTION II

The Town Council finds and determines that the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) per CEQA Guidelines under the General Rule (Section 15061(b)(3)), which sets forth that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that the proposed Town Code text amendments will have no significant negative effect on the environment.

SECTION III

If any provision of this ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION IV

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

SECTION V

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

SECTION VI

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on May 3, 2016, and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on May 19, 2016.

COUNCIL MEMBERS:
AYES:
NAYS:
ABSENT:

ABSTAIN

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ENDNOTES

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