ARTICLE VI. - SMOKING REGULATIONS

Footnotes:

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Editor's note—Ord. No. 1880, § I, adopted Nov. 18, 1991, repealed former Art. VI, §§ 18.60.010 and 18.60.015, relative to smoking regulations, which derived from Code 1968, §§ 17-6 and 17-6.5. Section II of Ord. No. 1880 enacted new smoking regulations which have been included herein as Art. VI, § 18.60.010.

Sec. 18.60.010. - Smoking in public places 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 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 cancer, heart disease, respiratory infection, decreased respiratory function, birth defects, bronchoconstriction, and bronchi-spasm.

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 and non-toxic air, and to recognize that the need to breathe smoke-free 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 or other establishment primarily engaged in serving food and/or beverages to the general public.

(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.
(4) Employee: Any person who is employed by an employer in consideration for direct or indirect monetary wages or profit.

(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) 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.

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

(10) 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.

(11) Electronic smoking device: An electronic and/or battery operated 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 electronic smoking devices, 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. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment or prevention of diseases.

(12) Smoking: Includes: (1) The act of inhaling/exhaling, burning or carrying any lighted tobacco product or by-product including cigarettes, cigars, pipes that burn tobacco or other plant material; or (2) Operating using an electronic smoking device or any other nicotine delivery product.

(13) 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 within the Town of Los Gatos including but not limited to the following places:
   a. Elevators.
   b. Public buildings.
   c. Medical health facilities.
   d. Eating establishments:
      (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).
   f. Theaters, auditoriums, museums and art galleries.
   g. Hotels and motels.

(2) Smoking shall be prohibited in the following outdoor areas:
a. Seating being used in connection with public events including entertainment, speaking performances, ceremonies and pageants.

b. Seating provided by eating establishments.

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 workplace 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 workplace 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.

g) Smoking—Penalties.

1. Any person, who violates this section by failing to post signs or failing to establish policies and procedures, is guilty of a violation of the Town Code and subject to a civil penalty of one hundred dollars ($100.00) 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 of this section is committed or permitted.

(2) Any person who smokes where smoking is prohibited when signs are posted in the required manner is guilty of an infraction.

(Ord. No. 1880, § II(17-6), 11-18-91; Ord. No. 2026, § XIX, 2-18-97; Ord. No. 2238, 5-19-15)

Sec. 18.60.015. - Regulation of cigarette, e-cigarette, and tobacco/nicotine delivery product vending machines.

(a) Findings. The Surgeon General of the United States and the American Heart Association has released information that shows approximately sixty (60) percent of all smokers become addicted before their 14th birthday and that more than three thousand (3,000) teenagers become regular smokers every day.

The Town Council finds that the availability of cigarettes, e-cigarettes, or other nicotine delivery products and/ or tobacco products marketed through vending machines promotes the use of tobacco products among minors, contrary to existing State Laws which prohibit the sale or distribution of tobacco products to persons under the age of eighteen (18). The Town Council finds further that regulating vending machines will promote the health considerations which justify this Council’s comprehensive regulation of smoking by the general public in public places.

(b) Prohibition. It shall be unlawful for any person, corporation or other entity to place, install or maintain or control any vending machine or any other machine or device designed for the dispensing, distribution or sale of cigarettes, e-cigarettes, or other nicotine delivery products and/or tobacco products in any public place within the Town of Los Gatos.

For the purposes of this section, "public place" is defined as any area to which any members of the public are invited, or in which any members of the public are permitted, including, but not limited to, 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.

(c) Penalties. Any person who violates this section is subject to a civil penalty of one hundred dollars ($100.00) and the cost of enforcing this section which shall include all costs, staff and attorney time. Such person 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.

(Ord. No. 1877, § 1(17-7), 11-4-91; Ord. No. 2238, 5-19-15)

Editor's note—At the direction of the Town, provisions enacted by Ord. No. 1877, § 1(17-7), adopted Nov. 4, 1991, have been included in the Code and designated at the discretion of the editor as § 18.60.015. Ord. No. 2238, adopted May 19, 2015, changed the title of § 18.60.015 from "Regulation of cigarette and tobacco product vending machines" to read as set out herein.