



CONSENT CALENDAR

Agenda Item # 2

AGENDA REPORT SUMMARY

Meeting Date: March 27, 2018

Subject: Ordinance No. 2018-442: Smoke-Free Environments

Prepared by: Sarah Henricks, Management Analyst Fellow

Reviewed by: J Logan, Assistant City Manager

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Ordinance No. 2018-442- redline
2. Ordinance No. 2018-442- clean

Initiated by:

City Council

Previous Council Consideration:

December 12, 1979; July 26, 2017; August 23, 2017; October 24, 2017; March 13, 2018

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 City will need to replace or modify trash receptacles that also serve as ashtrays in locations where smoking is proposed to be prohibited. Estimated project costs are not to exceed \$5,000.

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

- Do the amendments clarify where smoking is prohibited or permitted within the City of Los Altos and do they incorporate the direction provided by the City Council at its March 13, 2018 meeting?
- Shall the City Council introduce an ordinance that repeals Chapter 6.28 of the Los Altos Municipal Code in its entirety and replaces it with a new Chapter 6.28 that increases the number of smoke-free environments in Los Altos?

Summary:

- The attached, redline ordinance incorporates the changes made by the City Council at its March 13, 2018 meeting when the ordinance was introduced.

Staff Recommendation:

Move to adopt Ordinance No. 2018-442 replacing Chapter 6.28 of the Los Altos Municipal Code with a new Chapter 6.28 to further restrict smoking in the City of Los Altos with certain exceptions



Subject: Ordinance No. 2018-442: Smoke-Free Environments

Purpose

Adopt Ordinance No. 2018-442 to repeal Chapter 6.28 of the Los Altos Municipal Code in its entirety and replace it with a new Chapter 6.28 to increase the number of smoke-free environments in Los Altos.

Background

On March 13, 2018 the City Council introduced and waived further reading of Ordinance No. 2018-442 with amendments clarifying some language and reducing the number of smoke-free environments. Council's action included that enclosed and unenclosed common areas of multi-unit residences be removed from the ordinance; fines be reduced to include a warning upon the first violation, up to \$100 on the second violation, and up to \$200 on the third violation; and that clarification regarding smoking on or near City facilities be added. The Ordinance has been updated to reflect these changes.

Discussion/Analysis

This Ordinance will go into effect 31 days after adoption. Staff will partner with Breathe California of the Bay Area to begin an educational campaign to inform the community of the new prohibitions and to provide guidance to the business community on how to obtain compliance.

Options

- 1) Adopt Ordinance No. 2018-442

Advantages: Smoking restrictions increase the environments wherein smoking is prohibited thereby providing greater health protection to the public from effects of secondhand smoke. Action supports Santa Clara Healthy Cities Initiatives. Actions provides certain exceptions that permit smoking in areas that are the least harmful to others. Action is responsive to the business community.

Disadvantages: Restrictions to those who desire to smoke may inhibit their ability to participate in outdoor activities and dine outdoors, as well as their use of public spaces, which may curb attendance and their ability to purvey establishments in Los Altos. Likewise, an ordinance that prohibits smoking near establishments may deter current or potential employees from continuing or seeking employment in the City.

- 2) Do not adopt Ordinance No. 2018-442

Advantages: None



Subject: Ordinance No. 2018-442: Smoke-Free Environments

Disadvantages: The existing smoking prohibitions, which prevent smoking anywhere on the Civic Center Campus and in all recreation areas and their associated parking areas will remain in effect.

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2018-442

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS REPEALING CHAPTER 6.28 OF THE CITY OF LOS ALTOS MUNICIPAL CODE IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 6.28 DEFINING “SMOKE FREE ENVIRONMENTS” IN LOS ALTOS

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; 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; and

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

The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and

The California Air Resources Board 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; and

The California Environmental Protection Agency (EPA) 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; and

WHEREAS, exposure to secondhand smoke anywhere 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 number and proximity of smokers; 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; 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; and

Secondhand smoke is responsible for an estimated 41,300 deaths related to heart disease and lung cancer among adult nonsmokers each year in the United States; and

Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent and increases the risk of stroke by 20 percent to 30 percent; and

WHEREAS, laws restricting use of electronic smoking devices 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, such as formaldehyde, acetaldehyde, lead, nickel, and toluene, in electronic smoking devices; 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;" and

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

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; and

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

In 2012, American poison control centers received 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; and

Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging; and

WHEREAS, despite limited research on the long-term effects of secondhand exposure to cannabis smoke, it is considered an irritant to the throat and lungs and contains levels of volatile chemicals and carcinogens that are similar to tobacco smoke, raising concerns about the risk for cancer and lung disease; additionally, some research suggests that cannabis smoke

is more harmful to the circulatory system than tobacco smoke; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions, including authority to completely ban smoking (Health & Safety Code §118910); and

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smoke free air laws, as evidenced by the following:

A 2008 survey of California voters found that 97 percent thought that secondhand smoke was 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; 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; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco and cannabis use around non-users of either substance, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking and tobacco and cannabis use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City of Los Altos.

The City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: Chapter 6.28 of the Los Altos Municipal Code entitled “Smoke Free Recreation Areas” is hereby repealed in its entirety and replaced with a new Chapter 6.28 entitled “Smoke-Free Environments” to read as follows:

6.28.010 DEFINITIONS. The following words and phrases, whenever used in this Chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. “Bar” or “tavern” means any business licensed or required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileged as a “public premise” as defined by California Business and Professions Code section 23039.

- B. “Business” means any sole proprietorship, partnership, joint venture, corporation, associations, landlord, or other entity formed for profit-making purposes.
- C. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For purposes of this Chapter, the term “cannabis” shall include “cannabis,” “cannabis concentrate” and “cannabis products” as those terms are defined by California Business and Professions Code section 26001, and specifically includes hashish, dabs, or similarly mildly euphorogenic and hallucinogenic drugs are prepared from the plant genus *Cannabis*.
- D. “City” means the City of Los Altos.
- E. “Civic Center Campus” means the publicly owned property bounded by San Antonio Road and Hillview Avenue, including the Hillview Community Center, Los Altos Library, Los Altos Police Department, Los Altos History Museum, Los Altos Apricot Orchard, Los Altos City Hall, and all recreation and parking areas on this property.

~~F. “Common area” means every enclosed or unenclosed area of a multi-unit residence that residents of more than one unit of that multi-unit residence are entitled to enter and/or use, including but not limited to, halls and paths, lobbies and courtyards, elevators and stairs, community rooms and playgrounds, gym facilities and swimming pools, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.~~

G.F. “Dining area” means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink.

H.G. “Downtown Triangle” means the geographic area bordered by W. Edith Avenue, S. San Antonio Road, and Foothill Expressway and includes streets, sidewalks, and public plazas.

H.H. “Electronic Smoking Device” means an electronic or battery-operated device that can be used to deliver an inhaled dose of nicotine, cannabis, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “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, vape pen, or any other product name or descriptor.

~~F.I.~~ “Employee” means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.

~~K.J.~~ “Employer” means any business or nonprofit entity that retains the services of one or more employees.

~~L.K.~~ “Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has

- (1) Any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
- (2) Four (4) walls or other vertical constraints to airflow including, but not limited to vegetation that exceeds six (6) feet in height, whether or not those boundaries include vents or other openings.

~~M.~~ “Multi-Unit Residence” means property containing two (2) or more dwelling units, including, but not limited to, apartment buildings, condominium complexes, senior and assisted living facilities, and long-term health care facilities. Multi-unit residences do not include the following:

- (1) a single family home; or
- (2) a single family home with a detached or attached in-law, second unit, or accessory dwelling unit permitted pursuant to California Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the City adopted pursuant to those sections.

~~N.L.~~ “Nonprofit Entity” means 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 Chapter.

~~O.M.~~ “No smoking sign” means a sign containing the words “no smoking” or the international “no smoking” symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).

~~P.N.~~ “Open space” means any lot or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.

~~E.O.~~ “Person” means any natural person, individual, partnership, employer, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

~~R.P.~~ “Place of employment” means 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 operation, regardless of the hours of operation, including, but not limited to, vehicles used in employment or for business purposes, taxis, employee cafeterias, lounges and restrooms, hotels, conference and banquet rooms – or other dining areas, warehouses, long-term health care facilities, and lobbies and hallways. A private residence is not a “place of employment” unless it is used as a day services center or a child care, health care, board and care, or community foster care facility, licensed by the State of California.

~~S.Q.~~ “Public event” means any event which is open to and may be attended by the general public, including but not limited to such events as farmers’ markets, parades, craft fairs, festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.

~~F.R.~~ “Public place” means any area publicly or privately owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement. Examples of “public places” include but are not limited to places of business or employment, restaurants, restaurant/bar combinations, bars, outdoor dining or seating areas, offices, waiting rooms, entryways and exits, lobbies, service areas, theatres, museums, hotels, recreation areas, sports arenas, parks, city facilities, plazas, parking lots and garages, and open spaces.

~~U.S.~~ “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which smoking is prohibited.

~~V.T.~~ “Recreational Area” means any area that is publicly owned, controlled, or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes, but is not limited to, open spaces, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, and skateboard parks. For the purposes of this Chapter, “recreational area” also includes any associated parking lot or other area designated or primarily used for parking vehicles of persons accessing a recreational area.

~~W.U.~~ “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.

~~V.~~ “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or cannabis or other controlled substances *and* the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, electronic smoking device vapors, and cannabis smoke or vapors.

~~W.~~ “Smoking” means inhaling, exhaling, emitting, burning, possessing, holding, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, any other smoke or vapor inhalation device, lighted smoking equipment, or accessory used for burning or vaporizing any tobacco product, cannabis, plant, or other combustible substance. “Smoking” includes smoking cannabis or marijuana for medical purposes.

~~X.~~ “Sports arena” means enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, baseball stadiums, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

~~Y.~~ “Tobacco Product” means:

- (1) any substance 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, and
- (3) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, including but not limited to cartridges for electronic cigarettes or electronic smoking devices.
- (4) Notwithstanding any provision of subsections (1), (2), and (3) 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.

~~BB.Z.~~ “Unenclosed area” means any area that is not an enclosed area, defined in this section.

6.28.020 PROHIBITION OF SMOKING IN ENCLOSED ~~PLACES~~AREAS

A. Smoking is prohibited in the enclosed areas of the following places within the City of Los Altos:

- (1) Public places;
- (2) Places of employment in accordance with California Labor Code section 6404.5, as may be amended;
- (3) Other businesses that have a common or shared air space with an enclosed area in which smoking is prohibited by law, such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways. Notwithstanding any other provisions, the fact that smoke enters one enclosed area from another enclosed area is conclusive proof that the areas shared a common or shared air space; and
~~(4) Common areas of multi-unit residences; and~~
~~(5)~~(4) City-owned vehicles and facilities.

B. Smoking is prohibited by this Chapter in all enclosed places of employment exempted by the California smoke-free workplace law (Labor Code section 6404.5 (e), as that section may be amended from time to time) except as provided below:

- (1) Smoking inside a tobacco shop is not prohibited by this subsection if (a) the tobacco shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the tobacco shop prohibits minors from entering the store at all times; and (c) the premises of the tobacco shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, “Tobacco Shop” means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.
- (2) Smoking in a theatrical production by the actors is not prohibited by this subsection if smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.

6.28.030 PROHIBITION OF SMOKING IN UNENCLOSED AREAS

A. Smoking is prohibited in the unenclosed areas of the following places within the City of Los Altos:

- (1) Recreational areas and associated parking areas
- (2) Service areas
- (3) Dining areas
- (4) Bar or tavern areas
- (5) Civic Center Campus

(6) Downtown Triangle

- i. Exception. The prohibition in this subsection (6) shall not apply to the ten (10) City-owned parking plazas located within the Los Altos Downtown Triangle, provided that smoking permitted by this subparagraph (i) may not occur within the reasonable distances required by Section 6.28.040 of this Chapter.

~~(7) Common areas of multi-unit residences, provided, however, that a person with legal control over a common area may designate a portion of an unenclosed common area as a designated smoking area if the designated smoking area meets all of the following criteria:~~

- ~~i. the area must be located a reasonable distance from any unit or enclosed area where smoking is prohibited by this Chapter or other law;~~
- ~~ii. the area must not include, and must be a reasonable distance from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including, for example, playgrounds, tennis courts, swimming pools, school campuses, and sandboxes;~~
- ~~iii. the area must be no more than ten percent (10%) of the total unenclosed area of the multi-unit residence for which it is designated;~~
- ~~iv. the area must have a clearly marked perimeter; and~~
- ~~v. the area must be identified by conspicuous signs.~~

~~(8) City facilities~~

~~(7) Unenclosed facilities owned or controlled by the city, such as corporation yards, service yards, and parking lots, and including streets and sidewalks. The grounds of any building owned, leased, or controlled by the City, including service, corporation, or maintenance yards~~

~~(8) Public events~~

- B. Nothing in this Chapter prohibits any person or employer, with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

6.28.040 REASONABLE SMOKING DISTANCE REQUIRED

- A. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited by this Chapter or state or federal law.
- B. Smoking in unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited by this Chapter or state or federal law.

- C. The prohibitions in subdivisions (~~a~~A) and (~~b~~B) shall not apply to unenclosed areas of private, residential properties including single-family dwellings and multi-unit residences.

6.28.050 OTHER REQUIREMENTS AND PROHIBITIONS.

- A. No person, employer, or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law.
- B. No person, employer, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law, including, without limitation, within a reasonable distance required by this Chapter from any area in which smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this Chapter.
- C. A person, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this Chapter shall post a clear, conspicuous and unambiguous “No Smoking” or “Smoke-free” sign at each point of ingress to the area, and in at least one other conspicuous point 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 with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the reasonable distance requirement set forth in Section 6.28.040. For purposes of this section, the City Manager or his / her designee shall be responsible for the posting of signs in regulated facilities owned or leased by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this Chapter.
- D. No person, employer, business, or nonprofit entity 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.
- E. Each instance of smoking in violation of this Chapter shall constitute a separate violation.
- F. This Chapter shall not be interpreted or construed to permit smoking, including smoking cannabis, where it is otherwise restricted by other applicable laws.

6.28.060 PENALTIES AND ENFORCEMENT.

- A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. Enforcement of this Chapter shall be the responsibility of the City. In addition, any peace officer or any enforcement officer designated by the City Manager also may enforce this Chapter.
- B. Each incident of Smoking in violation of this Chapter is an infraction subject to the following ~~fn~~penalties:

- (1) A verbal and written warning for the first violation;
- ~~(1)(2)~~ up to one hundred dollars (\$100) for the ~~first~~ second violation;
- ~~(2)(3)~~ up to two hundred dollars (\$200) for a ~~second~~ third violation within one year.;
- ~~(3) up to five hundred dollars (\$500) for a third violation within one year.~~

C. Violations of this Chapter are subject to a civil action and/or administrative citation brought by the City in accordance with Chapter 1.30 of the City Code as applicable.

D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

Except as otherwise provided, enforcement of this Chapter is at the sole discretion of the City. Nothing in this Chapter shall create a right of action in any person against the City or its agents to compel public enforcement of this Chapter against any party.

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2018 and was thereafter, at a regular meeting held on _____, 2018 passed and adopted by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Jean Mordo, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

ORDINANCE NO. 2018-442

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS REPEALING CHAPTER 6.28 OF THE CITY OF LOS ALTOS MUNICIPAL CODE IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 6.28 DEFINING “SMOKE FREE ENVIRONMENTS” IN LOS ALTOS

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; 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; and

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

The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and

The California Air Resources Board 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; and

The California Environmental Protection Agency (EPA) 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; and

WHEREAS, exposure to secondhand smoke anywhere 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 number and proximity of smokers; 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; 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; and

Secondhand smoke is responsible for an estimated 41,300 deaths related to heart disease and lung cancer among adult nonsmokers each year in the United States; and

Exposure to secondhand smoke increases the risk of coronary heart disease by about 25 percent to 30 percent and increases the risk of stroke by 20 percent to 30 percent; and

WHEREAS, laws restricting use of electronic smoking devices 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, such as formaldehyde, acetaldehyde, lead, nickel, and toluene, in electronic smoking devices; 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;" and

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

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; and

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

In 2012, American poison control centers received 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; and

Children who ingest cigarette butts can experience vomiting, nausea, lethargy, and gagging; and

WHEREAS, despite limited research on the long-term effects of secondhand exposure to cannabis smoke, it is considered an irritant to the throat and lungs and contains levels of volatile chemicals and carcinogens that are similar to tobacco smoke, raising concerns about the risk for cancer and lung disease; additionally, some research suggests that cannabis smoke

is more harmful to the circulatory system than tobacco smoke; and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions, including authority to completely ban smoking (Health & Safety Code §118910); and

WHEREAS, there is broad public recognition of the dangers of secondhand smoke and support for smoke free air laws, as evidenced by the following:

A 2008 survey of California voters found that 97 percent thought that secondhand smoke was 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; 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; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

NOW THEREFORE, it is the intent of the City Council, in enacting this Ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of smoking and tobacco and cannabis use around non-users of either substance, especially children; by protecting the public from exposure to secondhand smoke where they live, work, and play; by reducing the potential for children to wrongly associate smoking and tobacco and cannabis use with a healthy lifestyle; and by affirming and promoting a healthy environment in the City of Los Altos.

The City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1. AMENDMENT OF CODE: Chapter 6.28 of the Los Altos Municipal Code entitled “Smoke Free Recreation Areas” is hereby repealed in its entirety and replaced with a new Chapter 6.28 entitled “Smoke-Free Environments” to read as follows:

6.28.010 DEFINITIONS. The following words and phrases, whenever used in this Chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. “Bar” or “tavern” means any business licensed or required to be licensed by the Department of Alcoholic Beverage Control for alcoholic beverage on-sale privileged as a “public premise” as defined by California Business and Professions Code section 23039.

- B. “Business” means any sole proprietorship, partnership, joint venture, corporation, associations, landlord, or other entity formed for profit-making purposes.
- C. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For purposes of this Chapter, the term “cannabis” shall include “cannabis,” “cannabis concentrate” and “cannabis products” as those terms are defined by California Business and Professions Code section 26001, and specifically includes hashish, dabs, or similarly mildly euphorogenic and hallucinogenic drugs are prepared from the plant genus *Cannabis*.
- D. “City” means the City of Los Altos.
- E. “Civic Center Campus” means the publicly owned property bounded by San Antonio Road and Hillview Avenue, including the Hillview Community Center, Los Altos Library, Los Altos Police Department, Los Altos History Museum, Los Altos Apricot Orchard, Los Altos City Hall, and all recreation and parking areas on this property.
- F. “Dining area” means any area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink.
- G. “Downtown Triangle” means the geographic area bordered by W. Edith Avenue, S. San Antonio Road, and Foothill Expressway and includes streets, sidewalks, and public plazas.
- H. “Electronic Smoking Device” means an electronic or battery-operated device that can be used to deliver an inhaled dose of nicotine, cannabis, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “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, vape pen, or any other product name or descriptor.
- I. “Employee” means any person who is employed or retained as an independent contractor by any employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer.
- J. “Employer” means any business or nonprofit entity that retains the services of one or more employees.

- K. “Enclosed Area” means an area in which outside air cannot circulate freely to all parts of the area, and includes an area that has
- (1) Any type of overhead cover whether or not that cover includes vents or other openings and at least three (3) walls or other vertical constraint to airflow including, but not limited to, vegetation of any height, whether or not those boundaries include vents or other openings; or
 - (2) Four (4) walls or other vertical constraints to airflow including, but not limited to vegetation that exceeds six (6) feet in height, whether or not those boundaries include vents or other openings.
- L. “Nonprofit Entity” means 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 Chapter.
- M. “No smoking sign” means a sign containing the words “no smoking” or the international “no smoking” symbol (consisting of a pictorial representation of a burning cigarette in a red circle or red heart with a red bar across it).
- N. “Open space” means any lot or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.
- O. “Person” means any natural person, individual, partnership, employer, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- P. “Place of employment” means 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 operation, regardless of the hours of operation, including, but not limited to, vehicles used in employment or for business purposes, taxis, employee cafeterias, lounges and restrooms, hotels, conference and banquet rooms – or other dining areas, warehouses, long-term health care facilities, and lobbies and hallways. A private residence is not a “place of employment” unless it is used as a day services center or a child care, health care, board and care, or community foster care facility, licensed by the State of California.
- Q. “Public event” means any event which is open to and may be attended by the general public, including but not limited to such events as farmers’ markets, parades, craft fairs,

festivals, concerts, performances or other exhibitions, regardless of any fee or age requirement.

- R. “Public place” means any area publicly or privately owned, to which the public has access by right or by invitation, expressed or implied, whether by payment of money or not and regardless of any age requirement. Examples of “public places” include but are not limited to places of business or employment, restaurants, restaurant/bar combinations, bars, outdoor dining or seating areas, offices, waiting rooms, entryways and exits, lobbies, service areas, theatres, museums, hotels, recreation areas, sports arenas, parks, city facilities, plazas, parking lots and garages, and open spaces.
- S. “Reasonable Distance” means a distance of twenty-five (25) feet in any direction from an area in which smoking is prohibited.
- T. “Recreational Area” means any area that is publicly owned, controlled, or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term “Recreational Area” includes, but is not limited to, open spaces, parks, picnic areas, playgrounds, sports fields, golf courses, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, roller- and ice-skating rinks, and skateboard parks. For the purposes of this Chapter, “recreational area” also includes any associated parking lot or other area designated or primarily used for parking vehicles of persons accessing a recreational area.
- U. “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.
- V. “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or cannabis or other controlled substances *and* the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “Smoke” includes, but is not limited to, tobacco smoke, electronic smoking device vapors, and cannabis smoke or vapors.
- W. “Smoking” means inhaling, exhaling, emitting, burning, possessing, holding, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, any other smoke or vapor inhalation device, lighted smoking equipment, or accessory used for burning or vaporizing any tobacco product,

cannabis, plant, or other combustible substance. “Smoking” includes smoking cannabis or marijuana for medical purposes.

- X. “Sports arena” means enclosed or unenclosed sports pavilions, gymnasiums, health spas, swimming pools, roller and ice rinks, baseball stadiums, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
- Y. “Tobacco Product” means:
 - (1) any substance 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, and
 - (3) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, including but not limited to cartridges for electronic cigarettes or electronic smoking devices.
 - (4) Notwithstanding any provision of subsections (1), (2), and (3) 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.
- Z. “Unenclosed area” means any area that is not an enclosed area, defined in this section.

6.28.020 PROHIBITION OF SMOKING IN ENCLOSED AREAS

- A. Smoking is prohibited in the enclosed areas of the following places within the City of Los Altos:
 - (1) Public places;
 - (2) Places of employment in accordance with California Labor Code section 6404.5, as may be amended;
 - (3) Other businesses that have a common or shared air space with an enclosed area in which smoking is prohibited by law, such as, without limitation, openings, cracks, air ventilation systems, doorways, hallways, and stairways. Notwithstanding any other provisions, the fact that smoke enters one enclosed area from another enclosed area is conclusive proof that the areas shared a common or shared air space; and
 - (4) City-owned vehicles and facilities.

B. Smoking is prohibited by this Chapter in all enclosed places of employment exempted by the California smoke-free workplace law (Labor Code section 6404.5 (e), as that section may be amended from time to time) except as provided below:

- (1) Smoking inside a tobacco shop is not prohibited by this subsection if (a) the tobacco shop does not sell edible products, including, for example, food, water, or drinks, or allow such products to be consumed on the premises; (b) the tobacco shop prohibits minors from entering the store at all times; and (c) the premises of the tobacco shop is an independent freestanding building unattached to any other building, establishment, or use. For the purposes of this exception, "Tobacco Shop" means any tobacco retailer that derives more than seventy-five percent (75%) of gross sales receipts from the sale or exchange of tobacco products and tobacco paraphernalia.
- (2) Smoking in a theatrical production by the actors is not prohibited by this subsection if smoking is an integral part of the story and the use of a fake, prop, or special effect cannot reasonably convey the idea of smoking in an effective way to a reasonable member of the anticipated audience.

6.28.030 PROHIBITION OF SMOKING IN UNENCLOSED AREAS

A. Smoking is prohibited in the unenclosed areas of the following places within the City of Los Altos:

- (1) Recreational areas and associated parking areas
- (2) Service areas
- (3) Dining areas
- (4) Bar or tavern areas
- (5) Civic Center Campus
- (6) Downtown Triangle
 - i. Exception. The prohibition in this subsection (6) shall not apply to the ten (10) City-owned parking plazas located within the Los Altos Downtown Triangle, provided that smoking permitted by this subparagraph (i) may not occur within the reasonable distances required by Section 6.28.040 of this Chapter.
- (7) The grounds of any building owned, leased, or controlled by the City, including service, corporation, or maintenance yards
- (8) Public events

B. Nothing in this Chapter prohibits any person or employer, with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.

6.28.040 REASONABLE SMOKING DISTANCE REQUIRED

A. Smoking in all unenclosed areas shall be prohibited within a reasonable distance from any doorway, window, opening, crack, or vent into an enclosed area in which smoking is prohibited by this Chapter or state or federal law.

- B. Smoking in unenclosed areas shall be prohibited within a reasonable distance from any unenclosed areas in which smoking is prohibited by this Chapter or state or federal law.
- C. The prohibitions in subdivisions (A) and (B) shall not apply to unenclosed areas of private, residential properties including single-family dwellings and multi-unit residences.

6.28.050 OTHER REQUIREMENTS AND PROHIBITIONS.

- A. No person, employer, or nonprofit entity shall knowingly permit smoking in an area which is under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law.
- B. No person, employer, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law, including, without limitation, within a reasonable distance required by this Chapter from any area in which smoking is prohibited. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this Chapter.
- C. A person, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this Chapter shall post a clear, conspicuous and unambiguous “No Smoking” or “Smoke-free” sign at each point of ingress to the area, and in at least one other conspicuous point 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 with a red bar across it). Signs posted on the exterior of buildings to comply with this section shall include the reasonable distance requirement set forth in Section 6.28.040. For purposes of this section, the City Manager or his / her designee shall be responsible for the posting of signs in regulated facilities owned or leased by the City. Notwithstanding this provision, the presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this Chapter.
- D. No person, employer, business, or nonprofit entity 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.
- E. Each instance of smoking in violation of this Chapter shall constitute a separate violation.
- F. This Chapter shall not be interpreted or construed to permit smoking, including smoking cannabis, where it is otherwise restricted by other applicable laws.

6.28.060 PENALTIES AND ENFORCEMENT.

- A. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. Enforcement of this Chapter shall be the responsibility of the City. In addition, any peace officer or any enforcement officer designated by the City Manager also may enforce this Chapter.

- B. Each incident of Smoking in violation of this Chapter is an infraction subject to the following penalties:
 - (1) A verbal and written warning for the first violation;
 - (2) up to one hundred dollars (\$100) for the second violation;
 - (3) up to two hundred dollars (\$200) for a third violation within one year.
- C. Violations of this Chapter are subject to a civil action and/or administrative citation brought by the City in accordance with Chapter 1.30 of the City Code as applicable.
- D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

Except as otherwise provided, enforcement of this Chapter is at the sole discretion of the City. Nothing in this Chapter shall create a right of action in any person against the City or its agents to compel public enforcement of this Chapter against any party.

SECTION 2. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 3. PUBLICATION. This ordinance shall be published as provided in Government Code section 36933.

SECTION 4. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2018 and was thereafter, at a regular meeting held on _____, 2018 passed and adopted by the following vote:

AYES:
 NOES:
 ABSENT:
 ABSTAIN:

 Jean Mordo, MAYOR

Attest:

 Jon Maginot, CMC, CITY CLERK