

**ORDINANCE NO. 2011-372**

**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  
TO REGULATE SMOKING IN CITY PARKS**

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

- Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and
- Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease and stroke, in addition to cancer of the lungs, larynx, esophagus and mouth; 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 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 causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent; and
- Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year; and exacerbates childhood asthma; and

**WHEREAS**, the U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and

**WHEREAS**, exposure to secondhand smoke imposes great social and economic costs, as evidenced by the following:

- The total annual economic burden of smoking in the United States is \$193 billion; and
- The total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone; and

**WHEREAS**, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke does occur 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
- Irritation from secondhand smoke begins at levels as low as 4 micrograms per cubic meter, and in some outdoor situations, this level can be found as far away as 13 feet from the burning cigarette; and
- To be completely free from exposure to secondhand smoke in outdoor places, a person may have to move nearly 25 feet away from the source of the smoke, about the width of a two lane road; and

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

- In 2004, American poison control centers received nearly 8,000 reports of children poisoned by the ingestion of cigarettes, cigarette butts and other tobacco products; and
- Children who ingest cigarette butts can experience vomiting, nausea, lethargy and gagging; and

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

- It is estimated that over two billion cigarette butts are discarded every day worldwide, and that Americans alone discard more than 175 million pounds of cigarette butts every year; and
- Cigarette filters, made of plastic cellulose acetate, take approximately 15 years to decompose; and

- In just three hours, 340,000 cigarette butts were collected from California beaches during the 2008 Coastal Cleanup Day, making cigarette butts the most common type of trash found 24 years in a row; and
- Cigarette filters have been found in the stomachs of birds, fish, whales and other marine creatures that have mistaken the filters for food, causing the animals to ingest harmful plastic and toxic chemicals; and
- Los Angeles County recorded a 40% decrease in cigarette butts after banning smoking on beaches in three cities; and

**WHEREAS**, creating smokefree areas helps protect the health of the 86.7% of Californians who are nonsmokers; and

**WHEREAS**, state law prohibits smoking within 25 feet of playgrounds and tot lots and expressly authorizes local communities to enact additional restrictions; 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 around non-tobacco users, especially children; by protecting the public from exposure to secondhand smoke where they play, exercise and relax; by protecting the environment from tobacco-related litter; by reducing the potential for children to wrongly associate smoking with a healthy lifestyle; and by affirming and promoting a healthy environment in and around the City parks.

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

**SECTION 1.** Chapter 6.28 of the Los Altos Municipal Code entitled “Smoking” is hereby repealed in its entirety and replaced with a new Chapter 6.28 8.26 entitled “Smoke Free Recreation Areas” 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. “Parking Area” means a parking lot or any other area designated or primarily used for parking vehicles of Persons accessing a Recreational Area.

B. “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity except the City.

C. “Recreational Area” means any outdoor area, that is publicly owned 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, parks, picnic areas, playgrounds, sports fields, walking paths, gardens, hiking trails, bike paths and swimming pools.

D. "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 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 cigarette vapors and marijuana smoke.

E. "Smoking" means engaging in an act that generates Smoke, such as for example: possessing a lighted pipe, lighted hookah pipe, an operating electronic cigarette, a lighted cigar, or a lighted cigarette of any kind; or lighting or igniting of a pipe, cigar, hookah pipe, or cigarette of any kind.

#### **6.28.020 Smoking Prohibited.**

A. Smoking is prohibited anywhere in a Recreational Area or in any Parking Area.

B. Nothing in this chapter shall be construed to prohibit Smoking in any area in which such Smoking is already prohibited by state or federal law unless the applicable state or federal law does not preempt additional local regulation.

#### **6.28.030 Other Requirements and Prohibitions.**

A. No ash can, ashtray, or other Smoking waste receptacle shall be placed in any area in which Smoking is prohibited by this chapter.

B. 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 the City Code, unless otherwise required by state or federal law.

C. No Person shall dispose of used Smoking waste within the boundaries of an area in which Smoking use is prohibited by this chapter.

D. "No Smoking" or "Smoke-Free" signs shall be posted in a quantity and manner reasonably likely to inform individuals occupying the Recreational Area and Parking 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).

E. The presence of Smoking waste receptacles in violation of subsection A above and the absence of signs required by subsection D above shall not be a defense to a violation of any provision of this chapter.

F. 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. Each instance of Smoking in violation of this chapter shall constitute a separate violation.

**6.28.040 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. Violations of this chapter are subject to criminal enforcement as a misdemeanor brought by the City, punishable in accordance with Chapter 1.20 of the City Code.

C. Violations of this chapter are subject to 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 the chapter.

E. 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.

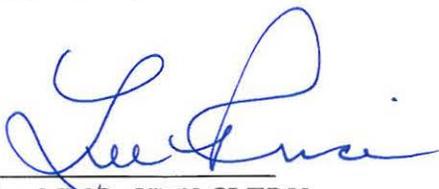
**SECTION 3. PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933.

**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 July 26, 2011 and was thereafter, at a regular meeting held on August 23, 2011 passed and adopted by the following vote:

AYES: CARPENTER, CASAS, FISHPAW, SATTERLEE, PACKARD  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

Attest:

  
Lee Price, MMC, CITY CLERK

  
Ronald D. Packard, MAYOR

