

**DRAFT
ORDINANCE NO. ____**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING SECTION 18.50.100 OF THE TOWN CODE
TO PROHIBIT TARGETED RESIDENTIAL PICKETING**

WHEREAS, pursuant to the Town’s police power, as granted broadly under Article XI, Section 7 of the California Constitution, the Town Council has the authority to enact and enforce ordinances and regulations for the public peace, morals and welfare of the Town and its residents; and

WHEREAS, picketing activity that is targeted at a particular residence or household whose occupants do not welcome such activity may harass and intimidate such occupants, is inherently and unreasonably offensive to and intrusive upon the right to privacy in the home and may cause the occupants of such home to experience great emotional distress; and

WHEREAS, such unwelcome and targeted picketing activity creates a ‘captive audience’ situation because the occupants of a residence or household cannot readily move to another residence or household in order to avoid the unwelcome picketing activity being directed at them; and

WHEREAS, the purpose of this ordinance is to reasonably regulate the time, place and manner of picketing activity targeted at a particular residential dwelling. The regulations are content neutral and are intended to protect against the devastating effect of targeted picketing on the quiet enjoyment of the home; and

WHEREAS, this ordinance is not intended to and do not restrict the rights of free speech or alternative channels of communication. The ordinance leaves ample room for dissemination of ideas in a general way through marches, demonstrations, and placards employed in residential neighborhoods and other places, provided individuals are not targeted within 300 feet of their home; and

WHEREAS, in developing this ordinance, the Town Council has been mindful of legal principles relating to the regulations of targeted residential picketing. The Town Council has considered decisions of the United States Supreme Court, including but not limited to: *Frisby vs Schultz* (1988) 487 U.S. 474, and *Village of Belle Terre vs Boraas* (1974) 416 U.S. 1, 9; several California cases, including but not limited to: *City of San Jose vs Superior Court* (1995) 32 Cal.App.4th 330; *Sundance Saloon, Inc. vs City of San Diego* (1989) 213 Cal.App.3d 807; and, *Concerned Citizens of Murphys vs Jackson* (1977) 72 Cal.App.3d 1021; and

WHEREAS, the California Appellate Court decision in the City of San Jose vs Superior Court, referenced above, supports the language of this chapter on its face and in its application as a content neutral time, place and manner restriction. Consistent with the City of San Jose decision, the Town Council has reasonably chosen this 300 foot buffer zone to provide a minimum degree of protection to the residents of targeted homes.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Los Gatos as follows:

SECTION 1. Section 18.50.100 of the Los Gatos Town Code is amended to read as follows:

Sec. 18.50.100. - Targeted residential picketing prohibited.

- A. No person shall engage in picketing activity that is targeted at and is within three hundred feet of a residential dwelling.
- B. For purposes of this chapter, the term "residential dwelling" means any permanent building being used by its occupants solely for non-transient residential uses.
- C. For purposes of this chapter, the term "targeted" picketing means picketing activity that is targeted at a particular residential dwelling and proceeds on a definite course or route in front of or around that particular residential dwelling.
- D. This chapter does not and shall not be interpreted to preclude picketing in a residential area that is not targeted at a particular residential dwelling.

Sec. 18.50.110. - Picketing before or about a residential dwelling prohibited.

- A. It is unlawful for any person to engage in picketing before or about a residential dwelling of any individual in the Town of Los Gatos.
- B. Enforcement of this section shall be limited to those situations where the picketing proceeds on a definite course or route in front of a residential dwelling and is directed at that residential dwelling.
- C. This section does not and shall not be interpreted to preclude general marching through residential neighborhoods.

Sec. 18.50.120. - Private right of action.

- A. Any person who is aggrieved by an act prohibited by this Chapter may bring an action for damages, injunctive and/or declaratory relief, as appropriate, in a court of competent jurisdiction against any person who has violated, has conspired to violate, or proposes to violate the provisions of this chapter.
- B. Any aggrieved person who prevails in such an action shall be entitled to recover from the violator those damages, costs, attorneys' fees and such other relief as determined by the court. In addition to all other damages or relief, the court may award to the aggrieved person a civil penalty of up to one thousand dollars for each violation of this chapter.

- C. The remedies provided by this chapter are in addition to any other legal or equitable remedies the aggrieved person may have and are not intended to be exclusive.

Sec. 18.50.130 - Penalty.

In addition to any civil remedy created herein, the violation of any provision of Sections 18.50.100 or 18.50.110 shall constitute a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars or by imprisonment for a period not to exceed six months, or by both such fine and imprisonment. Each and every day such a violation exists shall constitute a separate and distinct violation of those sections. In addition to the foregoing, any violation of Sections 18.50.100 or 18.50.110 shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION 2. The approval of this ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA," and 14 Cal. Code Reg. §§ 15000 et seq., "CEQA Guidelines"). This ordinance imposes a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action. As such, under CEQA Guidelines section 15378(b)(4), the ordinance is not a "project" within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment. If revenue from the tax were used for a purpose that would have either such effect, the Town would undertake the required CEQA review for that project. Therefore, pursuant to CEQA Guidelines section 15060, CEQA analysis is not required.

SECTION 3. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

SECTION 4. This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 2nd day of November 2021 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 16th day of November 2021. This ordinance takes effect 30 days after it is adopted. 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).

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the _____ day of _____ 2021, by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

ATTACHMENT 1