

ORDINANCE NO. _____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING CHAPTER 18 OF THE LOS GATOS TOWN CODE BY
ADDING ARTICLE IX SECTIONS 18.90.010-18.90.050 ENTITLED DRONES
AND UNMANNED AIRCRAFT SYSTEMS**

WHEREAS, Unmanned ~~Aerial~~ Aircraft Systems (UAS), or “drones,” are an important technology that can be used in a number of beneficial ways for recreational, commercial, and governmental purposes; and

WHEREAS, given the proliferation of this technology, while respecting the jurisdiction of the Federal Aviation Administration (FAA), it is important for local agencies and the state to craft a regulatory framework that provides for the appropriate uses of this technology, while also addressing important public safety, nuisance and other issues that arise as drones are increasingly used for recreational, business, and governmental purposes; and

WHEREAS, the operation of UAS, such as model UAS and ~~civil~~ commercial UAS, commonly referred to as drones, can at times pose a hazard to full-scale aircraft in flight, and to first responders, including firefighting aircraft, air ambulance helicopters, and law enforcement helicopters and to persons and property on the ground, including law enforcement and medical personnel; and

WHEREAS, imposing community-based safety requirements and restrictions on the operation of UAS that do not preempt federal aviation rules or authority, or state law, is necessary to mitigate such risks and to protect the public from the hazards associated with the operation of UAS; and

WHEREAS, it is proposed that the addition of Article IX, Sections 18.90.010-18.90.050 to Chapter 18 of the Los Gatos Municipal Code, will provide safety to the people in the Town through education and enforcement, while strengthening and preserving property rights.

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

SECTION 1. INCORPORATION OF RECITALS. The Town Council of the Town of Los Gatos finds that all Recitals are true and correct and incorporate them herein by this reference.

SECTION 2. LOS GATOS TOWN CODE AMENDMENTS. Chapter 18 Article IX of the Los Gatos Town Code is hereby added as follows:

Article IX - DRONES AND UNMANNED AIRCRAFT SYSTEMS

Sec. 18.90.010 - Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) ~~Civil~~Commercial UAS shall mean an unmanned aircraft or unmanned aircraft system operated by any person for any purposes other than strictly hobby or recreational purposes, including, but not limited to, commercial purposes or in the furtherance of, or incidental to, any business or media service or agency.
- (b) *Drone* refers to any UAS.
- (c) *FAA* means the Federal Aviation Administration.
- (d) *Model UAS* shall mean an unmanned aircraft or unmanned aircraft system operated by any person strictly for hobby or recreational purposes.
- (e) *Person* shall mean natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them.
- (f) *Public UAS* shall mean an unmanned aircraft or unmanned aircraft system operated by any public agency or its authorized officers, employees, contractors, or agents for a governmental purpose, including but not limited to fire suppression, Emergency response, law enforcement and code enforcement operations, surveying and mapping property, inspecting infrastructure, monitoring traffic, and recording local events.
- (g) *Special event* means any event as defined in Town Code Chapter 14 Article X.
- (h) *Unmanned aircraft* shall mean an aircraft without a human pilot onboard, that is controlled by an operator on the ground, and is operated without the possibility of direct human intervention from within or on the aircraft.
- (i) *Unmanned aircraft system* (UAS) shall mean an unmanned aircraft and associated elements, including, but not limited to, any communication links and components that control the unmanned aircraft.
- (j) *Visual line of sight* means that a person operating an unmanned aircraft has an unobstructed view of the unmanned aircraft. The operator must use his or her own natural vision (which includes vision corrected by standard eyeglasses or contact lenses) to observe the unmanned aircraft. People other than the operator may not be used in lieu of the operator for maintaining visual line of sight to the unmanned aircraft, except as otherwise permitted by federal law. The use of vision-enhancing devices, such as binoculars, night vision goggles, powered vision magnifying devices, and goggles or other devices designed to provide a "first-person view" from the unmanned aircraft do not constitute visual line of sight of the person operating the unmanned aircraft.

Sec. 18.90.030 – Regulations.

The following shall apply to the operation of any UAS within the Town of Los Gatos, unless otherwise exempted by this Code or for which a waiver is obtained pursuant to federal statute:

1. No person shall operate any UAS within the Town of Los Gatos in a manner that is prohibited by any federal statute or regulation, or state of California statute or regulation.
2. No person shall operate any UAS within the Town of Los Gatos in a manner that interferes with manned aircraft, and any person operating any UAS shall always give way to any manned aircraft.
3. No person shall takeoff, land or operate any ~~model model or commercial~~ UAS ~~or civil UAS~~ within the Town of Los Gatos beyond the "visual line of sight" of the person operating the ~~model~~ UAS ~~or civil UAS~~. This section shall not apply to the use of first-person goggles (FPV) during authorized drone races on private property with the consent of the property owner. Federal rules regarding having a visual observer to keep the UAS within unaided sight may apply.
4. No person shall operate any ~~non-public model UAS or civil~~ UAS within the Town of Los Gatos other than during daylight hours defined as between official sunrise and official sunset for local time, except that a person may operate a ~~non-public model UAS or civil~~ UAS during periods of civil twilight if the UAS has lighted anti-collision lighting visible for at least three (3) statute miles. As used herein, "civil twilight" means a period of time that begins thirty (30) minutes before official sunrise and ends at official sunrise, and a period of time that begins at official sunset and ends thirty (30) minutes after official sunset.
5. No person shall operate any ~~model UAS or civil~~ UAS within the Town of Los Gatos more than four hundred (400) feet above the earth's surface, unless the UAS is both flown within a 400-foot radius of a structure and does not fly higher than four hundred (400) feet above the structure's immediate uppermost limit.
6. Excluding takeoff and landing, no person shall operate any model UAS or ~~civil commercial~~ UAS within the Town of Los Gatos above or laterally closer than twenty-five (25) feet to any individual, who is not in a vehicle or covered structure, except the operator or the operator's helper(s).
7. No person shall takeoff, land or operate a ~~model UAS or civil~~ UAS on private property without the consent of the property owner.
8. No person shall ~~takeoff, land or~~ operate a model UAS or ~~civil commercial~~ UAS ~~over for the purpose of filming or observing~~ special events without prior notification to and authorization of the Town. Permitting fees may apply.
- ~~9. No person shall takeoff, land or operate a model UAS or civil UAS within one thousand five hundred (1,500) horizontal feet of any manned or unmanned aircraft.~~
- ~~109.~~ No person shall operate any UAS in a manner that interferes with firefighting, emergency services, law enforcement, or a military operation in response to an

Emergency. Immunities including but not limited to Government Code section 853.1 apply.

- ~~104.~~ No person shall ~~takeoff, land or operate a model UAS or civil~~ takeoff, land or operate any UAS at the scene of an emergency in violation of within five hundred (500) feet of any emergency vehicle that is operating with lights and/or sirens. Penal Code Sections 148.2 and 402.
- ~~12.~~ ~~No person shall takeoff, land or operate a model UAS or civil UAS within five hundred (500) feet of any active law enforcement or emergency response incident.~~
- ~~113.~~ No person shall takeoff, land or operate a model UAS or civil-commercial UAS from a place within two hundred (200) feet of a school facility while in session without prior notification and authorization of school officials.
- ~~14.~~ ~~No person shall takeoff, land or operate a model UAS or civil UAS within one hundred (100) feet of any public building without prior notification, and authorization of the Town.~~
- ~~125.~~ No person shall operate a ~~model UAS or civil~~ UAS that has any type of weapon attached to it.
- ~~136.~~ No person shall operate any ~~model UAS or civil~~ UAS within the Town of Los Gatos in violation of any temporary flight restriction (TFR) or notice to airmen (NOTAM) issued by the Federal Aviation Administration.
- ~~147.~~ No person shall takeoff, land, or operate any model UAS or civil-commercial UAS from a place within 500 feet of a critical infrastructure site, such as communication facilities, hospitals, dams, helicopter/helicopter pads, bridges, water treatment plant, without the prior written consent of the owner or operator of the critical infrastructure.
- ~~158.~~ No person shall operate any UAS within the Town of Los Gatos in a careless or reckless manner so as to endanger the life or property of another. The standard for what constitutes careless and reckless operation under this section shall be the same as the standard set forth in any federal statutes or regulations governing aeronautics including but not limited to Federal Aviation Rule 91.13.
- ~~169.~~ No person shall operate any ~~model UAS or civil~~ UAS within the Town in a manner which, utilizing the reasonable person standard, is designed, intended or which serves to harass, stalk, vex, annoy, disturb, frighten, intimidate, injure, threaten, victimize or place in extreme mental or emotional distress ~~any~~ person of ordinary sensibilities, whether that person is located on public or private property. The conduct described in this subsection includes, but is not limited to, using a ~~model UAS or civil~~ UAS to follow and film, video-record, live-stream or photograph a person who has not consented to such activity.
- ~~1720.~~ No person shall operate any model UAS or civil-commercial UAS within the Town to capture, record or transmit any visual image or audio recording of any person or private real property located in the Town under circumstances in which the subject person or owner of the subject real property has a reasonable expectation of privacy (including, but not limited to, inside a private office and inside a hotel room). This provision is intended to supplement, rather than duplicate, the prohibition against trespassing into the air space above the land of another person in order to capture any type of visual image or sound recording of a person engaging in a private, personal, or

familial activity in a manner that is offensive to a reasonable person, pursuant to California Civil Code Section 1708.8.

~~1824.~~ UAS operators are required to show proof of federal registration to local law enforcement officials upon request.

~~22.~~ No person shall operate any UAS while under the influence of alcohol or drugs that impair the ability of a person to operate a drone.

~~1923.~~ No person shall operate any model UAS or commercial civil UAS while operating a moving vehicle.

~~24. Pursuant to federal law, a person must be 16 years of age or older to operate a drone independently. For those under the age of 16, a person over the age of 21 and a registered drone operator with the FAA must be present.~~

~~2025.~~ Commercial Civil UAS users must obtain a business license pursuant to Town Code Chapter 14 Article II and may be required to obtain a permit pursuant to Town Code Chapter 14 Article IX to engage in commercial activity within Town borders.

~~2126.~~ The noise restrictions of Chapter 16 of the Los Gatos Town Code may apply to the operation of any model UAS or commercial civil UAS.

Sec. 18.90.040 - Exemptions.

1. The provisions of this chapter shall not apply to any public UAS operated by any public safety agency or code enforcement agency for lawful purposes and in a lawful manner or to any public agency or to the extent of delivering contracted services to a public agency.

2. The provisions of this chapter may not apply to any civil-commercial UAS operated pursuant to and in compliance with the terms and conditions of a valid Town-issued film permit or special event that allows the use of a drone.

~~3. The provisions of this chapter shall not apply to any UAS weighing less than 0.55 lbs.~~

Sec. 18.90.050 - Violations; penalties.

A violation of this Section can be charged or cited as a misdemeanor or infraction or administrative citation. Any person in violation of this Section may be subject to criminal, civil or administrative fines and penalties. Any violation of this Chapter is declared a public nuisance.

SECTION 3. CONSTRUCTION. The Town Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent. To the extent the provisions of the Los Gatos Municipal Code as amended by this Ordinance are substantially the same as the provisions of that Code as it read prior to the adoption of this Ordinance, those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

SECTION 4. CEQA. 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 5. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a 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 passed this ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid. 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.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 184th day of August 2020, 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 ____ day of ____ 2020. 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).

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: _____