

DRAFT ORDINANCE

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS ADDING ARTICLE V, "AIR QUALITY" TO CHAPTER 13, "HEALTH AND SANITATION" OF THE TOWN CODE ESTABLISH AIR QUALITY AND NOX EMISSIONS REGULATIONS, AND AMENDING SECTION 29.20.720, "ADMINISTRATION AND ENFORCEMENT" TO ADD THE IMPLEMENTATION OF THE AIR QUALITY ORDINANCE, AND AMENDING SECTION 29.20.720 TO ADD IMPLEMENTATION TO DUTIES OF THE BUILDING OFFICIAL

WHEREAS, the Federal Clean Air Act requires the Federal Environmental Protection Agency to establish federal air quality standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants;

WHEREAS, Nitrogen Dioxide, Ground-level Ozone, and Particulate Matter are three of the six criteria air pollutants explicitly addressed in the Federal Clean Air Act;

WHEREAS, the Clean Air Act requires the Environmental Protection Agency (EPA) to set National Ambient Air Quality Standards (NAAQS) for six common air pollutants, known as "criteria air pollutants", which include Particulate Matter (PM10 and PM2.5), Ground-level Ozone (O3), Carbon Monoxide (CO), Sulfur Dioxide (SO2), Nitrogen Dioxide (NO2), and Lead (Pb);

WHEREAS, the Clean Air Act also addresses 178 Hazardous Air Pollutants (HAPs) which are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects. Some examples include Benzene, Perchloroethylene, Methylene Chloride, Dioxins and Furans, Asbestos, Toluene, and Cadmium;

WHEREAS, Congress has found that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

WHEREAS, Congress has found that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments (Clean Air Act, 42 U.S.C. § 7401(a)(3));

ATTACHMENT 2

WHEREAS, pursuant to the California Clean Air Act Law, the California Air Resources Board (CARB) regulates mobile sources of pollution while local and regional authorities are responsible for controlling air pollution from other sources;

WHEREAS, much of the Greater Bay Area, including the Town of Los Gatos, remains a nonattainment area that does not meet the federal air quality standards established to protect public health,

WHEREAS, Nitric Oxide and Nitrogen Dioxide (collectively NOx) react with volatile organic compounds (VOCs) in the presence of sunlight to form Ground-level Ozone (O3);

WHEREAS, NOx can also contribute to the formation of fine particulate matter (PM2.5) through a series of chemical reactions in the atmosphere;

WHEREAS, emissions from building appliances contribute significantly to NOx, and therefore O3 and PM2.5 that are present in the Greater Bay Area at levels that violate state and federal standards;

WHEREAS, by establishing standards and policies that reduce NOx emissions will also lead to a reduction in Ground-level Ozone and PM2.5;

WHEREAS, NOx gases can irritate the airways in the human respiratory system, leading to impaired lung function, increased asthma attacks, cardiovascular harm, lower birth weight, and increased ER and hospital admissions;

WHEREAS, Ground-level ozone can cause respiratory issues, exacerbate asthma, reduce lung function, and lead to other health problems;

WHEREAS, Ground-level ozone also affects vegetation and ecosystems;

WHEREAS, PM2.5 can penetrate deep into the lungs and even enter the bloodstream, causing cardiovascular and respiratory diseases, as well as other health issues. It also contributes to visibility reduction and environmental degradation;

WHEREAS, the Bay Area Air Quality Management District approved rules on June 21, 2023, that outlaw the sale of NOx-emitting water heaters and furnaces in 2027 and 2029, respectively, in the Bay Area;

WHEREAS, preparing structures in the Town of Los Gatos for the upcoming implementation of the Bay Area Air Quality Management District's rules will promote efficiency and cost savings that will benefit Los Gatos residents and protect community health.

WHEREAS, Section 39002 of the California Health and Safety Code authorizes local agencies to establish air pollution standards that are stricter than statewide or federal standards;

WHEREAS, the subject Ordinance will add Article V (Air Quality) to the Town of Los Gatos Town Code as set forth herein;

WHEREAS, the subject Ordinance will amend section 29.20.720 (Administration and Enforcement) of the Town of Los Gatos Town Code as set forth herein;

WHEREAS, the legislature of the State of California has, in Article XI, Section 7 of the California Constitution, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry;

WHEREAS, this meeting was publicly noticed; and

WHEREAS, adoption of the proposed Ordinance is considered a "project" under Section 15378(a)(1) of the California Environmental Quality Act (CEQA);

WHEREAS, the proposed Ordinance may be found exempt from environmental review under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) in that there is no possibility that the proposed changes to the Town's Municipal Code may have a significant effect on the environment;

WHEREAS, after notification and public hearing, as specified by law and after presentation by the Building Official, proponents and opponents, the hearing was closed;

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

Section I. Legislative Findings.

The proposed amendments to the Town of Los Gatos Town Code are consistent with goals, policies, and actions from the 2040 General Plan including, but not limited to, the following:

Environment and Sustainability Element (ENV)

1. ENV 8.2 – Support Regional Efforts to Reduce Air Pollution: Coordinate with and support the Air District, Metropolitan Transportation Commission (MTC), State and Federal planning efforts and programs aimed at reducing air pollution, including ongoing monitoring and management of major pollutants affecting Los Gatos and the region, with particular focus on PM_{2.5} and PM₁₀ (Particulate Matter).
2. ENV 8.8 – Reduce Emissions from Commercial Sources: Reduce particulate emissions from dry cleaning, light manufacturing, wood burning, and landscape maintenance.

3. ENV 8.9 – Air Pollution Impacts During Construction: Require project proponents to prepare and implement a construction management plan that incorporates Best Available Control measures and all best management practices in accordance with the Air District standards to reduce criteria pollutants.
4. ENV 9.3 – Support Climate Change Initiatives: Support initiatives, legislation, and actions to respond to climate change.
5. ENV 9.4 – Raise Climate Change Impacts Awareness: Collaborate with local organizations, such as health care providers, public health advocates, and fire prevention organizations, to raise awareness about climate change impacts and to disseminate public emergency preparedness and response information as it relates to climate change.
6. ENV 9.6 – Energy Conservation and Renewable Energy Use: Promote energy conservation in business and residential uses by encouraging installation of fixture and appliance upgrades, installation of solar panels, and other retrofits to existing structures.
7. ENV 9.10 – Encourage and Incentivize Alternative Fuels: Support the use of non-polluting fuels by encouraging the inclusion of facilities for alternative fuels in new public and private developments and by offering incentives to encourage retrofits.
8. ENV 9.11 – Green Building: Foster awareness and encourage adoption of green building practices that include the design and development of environmentally responsible commercial and residential development and retrofits.
9. ENV 9.13 – Regional Green Building Programs: Coordinate with other local governments, special districts, nonprofits, and other public organizations to share resources, achieve economies of scale, and develop green building policies and programs that are optimized on a regional scale.
10. ENV 11.4 – Conservation and Reduction: Maximize the conservation and efficient use of energy in existing and new residences, businesses, and municipal buildings in Los Gatos.

NOx-emitting equipment has been shown to have a specific, adverse impact upon the public health and safety as evidenced by the following reports:

1. Gas appliances in California homes and buildings generate four times as much lung-damaging nitrogen oxide (NOx) pollution as the state's gas power plants, and roughly two thirds as much NOx as all the state's passenger cars, according to a 2022 report by RMI, SPUR, and Sierra Club titled "[Gas Appliances and Smog: California's Hidden Air Pollution Problem.](#)"
2. "[Effects of Residential Gas Appliances on Indoor and Outdoor Air Quality and Public Health in California,](#)" a study by UCLA, found that gas appliances not only emit NOx and PM2.5 indoors, but also outdoors, and that these pollutants have been linked to various acute and chronic health effects, including respiratory illness, cardiovascular disease, and premature death. If all residential gas appliances were immediately replaced with clean alternatives, the reduction of outdoor NOx and PM2.5 would result in 354 fewer

deaths, as well as 596 fewer cases of acute bronchitis, and 304 fewer cases of chronic bronchitis annually in California.

3. BMC Environmental Health published "[Short term exposure to air pollution and mortality in the US: a double negative control analysis](#)," a research paper that concluded breathing PM2.5, and possibly O3 and NO2, even for a short time, can increase the risk of death from any cause, and that these risks are present even at pollution levels that are currently considered safe.
4. A [report published by RMI, Mothers Our Front, Physicians for Social Responsibility, and the Sierra Club](#) found that gas stoves emit numerous pollutants and peak indoor air pollution from gas stoves can reach levels that would be illegal outdoors per EPA standards. Children are particularly at risk for asthma, aggravated respiratory symptoms, irritated airways, lung infections, decreased lung function, and learning deficits.
5. "[Fine particulate matter exposure during childhood relates to hemispheric-specific differences in brain structure](#)," a paper published by Environmental International, found that exposure to PM2.5 across the U.S. may be an important environmental factor influencing patterns of structural brain development in childhood.
6. BAAQMD conducted a study titled "[Assessing Ambient Air Quality and Health Impacts from Natural Gas Building Appliances in the Bay Area](#)," citing the harmful impacts of exposure to NOx and PM2.5 and simulation modeling showing the significant reduction in pollution by prohibit the sale of NOx-emitting appliances beginning in 2027.

SECTION II. Article V, "Air Quality" is hereby added to Chapter 13, "Health and Sanitation" of the Town Code to read as follows:

Chapter 13 – Health and Sanitation

Article V – Air Quality

Sec. 13.50.010 - Air Quality

The purpose of this Article is to protect public health safety and welfare by establishing objective, written public health and safety standards that enhance air quality conditions and reduce greenhouse gas emissions. The regulations of this Article are established under the authority of local jurisdictions to set stricter standards than those set forth by law or by the state board for nonvehicular sources (Section 39002 of the California Health and Safety Code). The regulations of this Article are further established pursuant to the Town's police power authority to protect the public health, safety, and welfare.

Sec. 13.50.020 - Definitions

As used in this Article, the following terms shall have the meanings set forth below.

ADDITION. An extension or increase in floor area of an existing building or structure.

ESTABLISHED. The date a building permit has been submitted to, accepted by, the Town of Los Gatos with all fees required for permit intake review having been paid.

INSTALLED. The placing, anchoring, or mounting of an appliance within a building or structure.

NEW CONSTRUCTION. Newly constructed buildings that have not been used or occupied for any purpose. New Construction does not include additions, alterations, or repairs.

NITROGEN OXIDES OR "NOx". The sum of nitrogen oxide (NO) and nitrogen dioxide (NO₂), collectively expressed as nitrogen oxide.

NOx EMITTING APPLIANCE. Any appliance that emits more than 0.0 nanograms of nitrogen oxides (expressed as NOx) per joule of heat output.

NOXIOUS OR TOXIC EMISSIONS. Gaseous or particulate byproducts of combustion that are harmful or hazardous to human health, animal life, or the environment. This includes, but is not limited to, emissions that contain nitrogen oxides (NOx), carbon monoxide (CO), sulfur dioxide (SO₂), volatile organic compounds (VOCs), heavy metals, dioxins, and furans.

QUALIFYING ALTERATIONS. Substantial renovations/alterations that include replacement of over 50 percent of the existing foundation for purposes other than a repair or reinforcement, as defined in California Existing Building Code, Section 202; or where over 50 percent of the existing framing above the sill plate is removed or replaced for purposes other than repair, shall meet the new construction requirements of California Code of Regulations, Title 24 as modified by the Town of Los Gatos. If either of these criteria are met within a three-year period, measured from the date of the most recent previously obtained permit final date, the project shall be subject to the new construction requirements.

REGULATED APPLIANCES. Space heaters, fireplaces, water heaters, pool and spa heaters, cooking appliances, outdoor barbecues, and clothes dryers

SPACE HEATER(S). Powered appliance such as a furnace or fireplace used to heat a designated area or space within a building to raise the temperature of air.

ZERO NOx EMITTING APPLIANCE. Appliance that emits no more than 0.0 nanograms of nitrogen oxides (expressed as NOx) per joule of heat output.

Sec. 13.50.030 - Applicability.

The requirements of this Article apply to all residential and nonresidential new construction or renovation/addition projects meeting the definition of new construction or qualifying alterations as defined in Town Code, established after the effective date of this Ordinance.

Sec. 13.50.040 - NOx-Emission Limit.

NOx-emissions from regulated appliances located in the building or property lines, including but not limited to, space heaters, fireplaces, water heaters, pool and spa heaters, cooking appliances, outdoor barbecues, and clothes dryers, shall not exceed 0.0 nanograms of nitrogen oxides (NOx) per joule of heat and/or light output.

Exceptions:

- a. Permanently installed emergency outdoor generators.
- b. Commercial tenant improvement projects.

Sec. 13.50.050 - Compliance.

The requirements of this Article shall be verified by manufacturers of regulated appliances providing documentation demonstrating the appliance is powered exclusively by electricity or certifying that their appliance does not exceed the NOx-emission limit based on performance data from standardized testing procedures specific to the type of appliance (e.g., American National Standard for Household Cooking Appliances Z21.1, ANSI Z21.1, for gas-fired appliances).

Sec. 13.50.060 - Limited exemptions from NOx-emission regulations.

The Town may grant limited exemptions to NOx emission regulations set forth in Section 13.05.030, provided that a request and justification are provided in writing and conform to the following:

- a. Dependent processes. Business or commercial activities that require the emission of NOx for specific operationally dependent processes. Examples include, but shall not be limited to, metallurgy, glass blowing, pottery, research and development uses, and certain medical processes.
- b. Commercial cooking. Commercial restaurants and similar commercial food preparatory facilities. Examples include, but shall not be limited to, restaurants, bakeries, grocery stores, and commercial kitchens.
- c. Cost prohibitive. If the applicant establishes that there is not a prescriptive or performance compliance pathway for the building system to achieve zero NOx emissions, under the California Building Energy Efficiency Standards, using commercially available technology and an approved calculation method.

In the event a limited exemption is granted, electric service will be required to any location where NOx emitting appliances are to be installed. The exact type and placement of electrical service and outlets in proximity to locations where NOx emitting equipment is installed shall be subject to the approval of the Building Official.

SECTION III. Section 29.20.720, “Administration and Enforcement,” of Article II, “Assignments of Duties, of Chapter 29, “Zoning Regulations,” is amended to read as follows:

Chapter 29 – Zoning Regulations

Article II Division 7 – ASSIGNMENT OF DUTIES

Sec. 29.20.720 – BUILDING OFFICIAL/DEPARTMENT

The Building Official/Department shall:

- (1) Determine estimated cost to replace nonconforming buildings.
- (2) Determine the value of destroyed nonconforming buildings.
- (3) Determine applications for exception from enclosure requirements for swimming pools.
- (4) Enforce all regulations regarding enclosure of swimming pools.

- (5) Jointly with the Town Engineer, determine whether a grading permit requires architecture and site approval.
- (6) Jointly with the Planning Director and the Town Engineer determine parking lot permits as provided by [section 29.10.155\(l\)](#).
- (7) Be a member of the Development Review Committee.
- (8) Determine when a structure poses an imminent safety hazard.
- (9) Implement the air quality and NOx emission regulations as provided in Article II, "Air Quality."

SECTION IV. Severability.

In the event that a court of competent jurisdiction holds any Section, subsection, paragraph, sentence, clause, or phrase in this Ordinance unconstitutional, preempted, or otherwise invalid, the invalid portion shall be severed from this Section and shall not affect the validity of the remaining portions of this Section. The Town hereby declares that it would have adopted each Section, subsection, paragraph, sentence, clause, or phrase in this Section irrespective of the fact that any one or more Sections, subsections, paragraphs, sentences, clauses or phrases in this Section might be declared unconstitutional, preempted, or otherwise invalid.

SECTION V. CEQA.

Adopting this Ordinance is not a project subject to CEQA because it can be seen with certainty that it will not impact the environment (CEQA Guidelines Section 15378).

SECTION VI. Publication.

In accordance with Section 63937 of the Government Code of the State of California, this Ordinance takes effect 30 days from the date of its passage. The Town Council hereby directs the City Clerk to cause this Ordinance or a summary thereof to be published or posted in accordance with Section 36933 of the Government Code of the State of California.

SECTION VII. Effective Date.

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the ___ day of _____ 20 , and adopted by the Town Council of the Town of Los Gatos at its regular meeting on the ___ day of _____ 20 , by the following vote:

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:

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

DRAFT