

ORDINANCE NO.

AN ORDINANCE OF THE TOWN OF LOS GATOS AMENDING CHAPTER 4 OF THE LOS GATOS TOWN CODE ENTITLED ANIMALS AND FOWL, ARTICLE VI, SECTIONS 4.60.050 AND 4.60.055, ENTITLED ANIMAL RESCUER AND TRAP-NEUTER-RETURN REGISTRATION AND MAINTENANCE OF ANIMAL RESCUER OR TNR ACTIVIST REGISTRATION, AND ARTICLE VIII ENTITLED BEEKEEPING

WHEREAS, on September 18, 2018 the Town Council adopted Ordinance No. 2276 providing a comprehensive update to Chapter 4 entitled Animals and Fowl, and:

WHEREAS, the implementation of the September 2018 updates to the Town Code regarding feral cats and TNR registration has shown that the requirements of 4.60.050 and 4.60.055 pertaining to registration by TNR organizations were unduly burdensome and unnecessary to achieve desired outcome; and

WHEREAS, in addition, Chapter 4 Article VIII entitled Beekeeping was not part of the 2018 comprehensive update; and

WHEREAS, the Town of Los Gatos recently annexed in 24 County islands into Town jurisdiction that were formerly governed by County of Santa Clara beekeeping regulations; and

WHEREAS, beekeeping has been deemed to be an important activity to promote plant pollination which is necessary to food supply and nationally, there has been a decline in pollinator health and local jurisdictions are encouraged to aid in efforts to rebuild pollinator health;

WHEREAS, it is the intent of the Town Council, in amending this ordinance, to remove the registration and permit requirements for TNR organizations and regulate beekeeping compliance with best practices and in closer compliance with surrounding jurisdictions' regulations; and

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES 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. AMENDMENT OF MUNICIPAL CODE. Chapter 4, Article VI, Sections 4.60.050 and 4.60.055 entitled Animal Rescuer and Trap-Neuter-Return Registration and Maintenance of Animal Rescuer or TNR Activist Registration is hereby amended to read as follows:

ATTACHMENT 1

Sec. 4.60.050. - Animal rescuer.

(a) Except as otherwise provided in this Title, any person or organization that maintains more than the number of adult animals allowed under this Chapter and Chapter 29, shall register with Town Manager or designee Animal Control Agency as an animal rescuer. In order to register as an animal rescuer, the applicant must provide the following information:

- (1) Verifiable proof of membership in or status as a State of California not-for-profit corporation that meets the requirements of Internal Revenue Code Section 501(c)(3) and is in good standing with the State of California.
- (2) Verifiable proof that animal adoption and placement of rescued animals with a new and permanent owner in a new home is one (1) of its primary organizational goals and proof of a history of placement of animals with new and permanent owners in new homes.
- (3) The location of the rescue work to be performed and the identity and contact information of the person(s) responsible for the care of the animals at that location.
- (4) A description of the practices that will be employed by the person or organization in conducting rescue work;
- (5) Payment of the registration fee in an amount established by resolution of the Town Council;
- (6) Agreement from the applicant to abide by the requirements set forth in this chapter, and;
- (7) Agreement from the applicant to any other conditions reasonably necessary for the proper care and maintenance of the animals.

Sec. 4.60.055. - Maintenance of animal rescuer.

(a) In order to maintain a valid animal rescuer registration, the animal rescuer shall comply with each of the following requirements:

- (1) Rescue work such as the temporary housing and care of domestic animals, or feeding for the purpose of trapping, shall be performed in conformity with all standards of animal care and housing set forth by state and local law;
- (2) Rescue work shall not create a public nuisance;
- (3) The animal rescuer shall cooperate with the animal control organization during investigations of complaints and inspections of animal areas; and
- (4) The animal rescuer shall limit the number of animals maintained at the registered location if the Animal Control Officer deems limitations are necessary because of space, finance, effect on surrounding area, history or any other criteria relevant to the animal rescuer's ability to maintain the animals.

(b) The Town Manager or Animal Control Agency may revoke the animal rescuer registration if the holder of the registration fails at any time to satisfy one (1) or more of the requirements specified in subsection (a).

SECTION 3. AMENDMENT OF MUNICIPAL CODE. Chapter 4, Article VIII, entitled Beekeeping is hereby amended to read as follows:

Sec. 4.80.002. – “Abandoned Apiary” defined.

As used in this article, “abandoned apiary” includes but is not limited to, a colony(s) or hive(s) and equipment a beekeeper has ceased to manage, is deserted, not maintained and/or left unattended, remains without authorization on the property of another, is without proper identification and/or registration, and/or where the owner is unable to be located and/or contacted.

Sec. 4.80.005. - "Apiary" defined.

As used in this article, "apiary" means bees, hives and appliances wherever the same are kept, located or found, including a fresh water source on the same property not more than one hundred (100) feet away from the hives (not a pool, hot tub nor spa.).

Sec. 4.80.010. - "Bees" defined.

As used in this article, "bees" means honey-producing insects of the species *Apis mellifera*, including the adults, eggs, larvae, pupae or other immature states thereof, together with such materials as are deposited into hives by their adults, except honey and rendered beeswax.

Sec. 4.80.012. – “Flight dispersing barrier.

As used in this article, “flight dispersing barrier”, also called flyover barrier, means a device such as a wall, fence, or dense vegetation or combination thereof that provides an obstruction through which honey bees cannot readily fly. Such barrier must be constructed at a minimum height of six feet from the ground and a maximum height in accordance with Town regulations for fences and accessory dwelling units. Barrier must surround the immediate vicinity of the colony(s) or hive(s) yet leave sufficient space for beekeeper to maintain colony(s) or hive(s). Property line fences or barriers may constitute flight dispersing barriers, if they are sufficiently close to the hive to redirect bee flight up and away from sensitive areas or neighboring properties. Barrier must conform with setback requirements for fences and accessory dwelling units as defined by Town regulations.

Sec. 4.80.015. - "Hive" defined.

As used in this article, "hive" means any receptacle or container made or prepared for the use of bees, or a box or similar container of which bees have taken possession.

Sec. 4.80.020. - "Location" defined.

As used in this article, "location" means any premises upon which an apiary is located.

Sec. 4.80.022. – “Undesirable honey bee behavior” defined.

As used in this article, “undesirable honey bee behavior” means any behavior exhibited by honey bees from a managed apiary that may result in harm to others. Such behaviors include, but are not limited to, characteristics of Africanized honey bees, bees exhibiting unusually aggressive defensive behavior, such as stinging or attempting to sting without provocation or exhibiting an unusual disposition toward swarming.

Sec. 4.80.025. - Notice required when moving apiaries.

No apiary shall be moved into the Town or within the confines of the Town without notice in writing being given to the Agricultural Commissioner of the County within thirty (30) days from the date movement is begun, stating:

- (a) The number of colonies of bees to be moved into or within the Town.
- (b) The location of the property in the Town to which bees are to be moved, and the name and address of the owner of the property or person in possession thereof.
- (c) The distance of the proposed location of the apiary from the nearest public road intersection.

Sec. 4.80.027. – Number of apiaries

- (a) Only two (2) hives may be kept or maintained on parcels over 5,000 square feet but less than 10,000 square feet in size.
- (b) Only three (3) hives may be kept or maintained on parcels over 10,000 square feet in size but less than 40,000 square feet in size.
- (c) Four (4) hives may be kept on parcels over 40,000 square feet in size. One (1) additional hive may be kept for each ½ acre over one acre.
- (d) Apiaries on properties under 10,000 square feet must be surrounded by a flight dispersing barrier. Apiaries on property over 10,000 square feet but under 40,000 square feet may require a flight dispersing barrier.
- (e) No hives may be kept on multi-family properties without the consent of the owner and all tenants in possession thereof.

Sec. 4.80.030. - Location of apiary.

No apiary shall be located:

- (a) In any required front or side setbacks. Apiaries shall only be located in the rear yard of any appropriately sized residential property. Apiaries may be located in a side setback

with written consent of adjacent property owner/resident or Director of Community Development Department.

- (b) No apiary may be kept or maintained within six (6) feet of a side property line nor within ten (10) of a rear property line without written consent of adjoining property owner/resident.
- (c) If an apiary is within 20 feet of a property line, either a flight dispersing barrier may be required or the entrance of the apiary may not face a property line.
- (d) On any lands not owned by the beekeeper without the written consent of the owner or person in possession thereof.
- (e) Closer than twenty-five (25) feet from any public road.

Sec. 4.80.035. - Water supply.

A water supply adequate in quantity for the apiary should be provided and maintained. If the property on which the apiary is located does not contain sufficient natural water, the beekeeper shall provide one or more water containers or water sources. The water supply shall provide landing sites for the honey bees to drink without drowning, undue competition, or over-crowding. It is unlawful for a beekeeper to allow a water source to become stagnant or a mosquito breeding site. The water supply should be not more than one hundred (100) feet away from the hives (not a pool, hot tub nor spa.)

Sec. 4.80.040. - Identification of premises.

Every person maintaining any apiary on premises other than their own residence shall identify the apiary by affixing and maintaining signs thereto showing the name of owner or person in possession of the apiary, the owner or person's current contact information, These signs shall be prominently placed and maintained on each entrance side of the apiary and immediately adjoining the same and lettered in black at least one (1) inch in height on a white or light background.

Sec. 4.80.043. – Nuisance.

No beekeeper shall own or operate an apiary that exhibits undesirable honey bee behavior, contains apiary pests, does not comply with all local, state and federal laws, or otherwise constitutes a health and safety hazard or nuisance.

Sec. 4.80.045. - Notice, correction of violation.

Any person transporting or maintaining an apiary who violates any of the provisions of this article may be given verbal or written notice by the agricultural commissioner of the county or

any law enforcement officer or animal control officer or code enforcement officer. A written notice shall also be posted on the location for forty-eight (48) hours, and it shall be unlawful for the owner or person in possession of said apiary to fail to correct the violations within that period. The provisions of this article, however, shall not authorize the keeping of bees in areas where they are not otherwise allowed by law.

Sec. 4.80.050. – Penalty, abatement.

Every person violating any provision of this article who has been given notice thereof as prescribed herein shall be guilty of a misdemeanor or infraction in the discretion of the Town Attorney and Office of Code Compliance. Remedies for violation of any of the provisions of this article may include administrative warnings, citations, maintenance by any party of civil cause of action, criminal prosecution or required removal of the nuisance apiary at owner’s expense.

Sec. 4.80.055. - Penalty, destruction of another’s apiary

It is illegal to kill an apiary that is not owned by yourself or without the permission from the apiary owner. No person may knowingly poison a hive with chemicals or any other substances with the intent to cause its death (or demise). Any person found guilty of this is subject to prosecution per municipal code as a misdemeanor. This section does not preclude or preempt prosecution under any relevant Penal Code sections or the maintenance of civil action by the apiary owner.

SECTION 4. 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 5. 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 6. 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.

SECTION 7. EFFECTIVE DATE. This ordinance shall take effect immediately and will be enforced thirty (30) days after its adoption.

SECTION 8. PUBLICATION AND POSTING. 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).

SECTION 9. INTRODUCTION AND ADOPTION. This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 15th day of October 2019 and adopted by the following vote as an ordinance of the Town Council of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 5th day of November 2019.

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: _____