

ORDINANCE 2259

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND ADDING SECTION 18.60.020 TO THE TOWN CODE OF LOS GATOS ENTITLED PERMITS FOR RETAILERS OF TOBACCO PRODUCTS AND/OR ELECTRONIC SMOKING DEVICES

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge; and

WHEREAS, the Town Council recently adopted Ordinance 2254 to regulate smoking within the Town of Los Gatos and protect the public and environment from secondhand smoke; and

WHEREAS, nationally, the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare and therefore is a threat to the public health, safety, and welfare of the residents of the Town of Los Gatos; and

WHEREAS, a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the Town of Los Gatos, to protect the health, safety, and welfare of the Town's residents; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

1. The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950); and
2. State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to anyone under the age of 21 (Cal. Pen. Code § 308); and
3. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952); and
4. State law prohibits the sale or furnishing of electronic cigarettes to minors (Cal. Health & Safety Code § 119405).

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, over 148 towns, cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco; and

WHEREAS, the Town of Los Gatos has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the 2011 Tobacco Products Scientific Advisory Committee (TPSAC) Report made findings that the availability of menthol cigarettes has an adverse impact on public health in the U.S. and recommended removal of menthol cigarettes from the marketplace and that the Menthol's anesthetizing effect makes the smoke "smooth" and easier to inhale while masking the harshness of tobacco, making menthol cigarettes more appealing to youth and beginner smokers; and

WHEREAS, a policy statement published by the American Academy of Pediatrics in November 2015, recommended a complete ban on all flavors used in electronic smoking devices, including menthol flavoring; and

WHEREAS, in 2016, California Medical Association (CMA) issued a white paper titled Flavored and Mentholated Tobacco Products: Enticing a New Generation of Users states, "Research supports the finding that flavors and menthol tobacco products are "starter" products that establish daily habits and increase addiction to tobacco products, make it harder to quit, and increase use of multiple tobacco products concurrently." although the use of cigarettes is declining in the United States (U.S.), sales of menthol cigarettes have steadily increased in recent years, especially among young people and new smokers; and

WHEREAS, the Town Council finds that the regulations imposed by this Section provide a reasonable opportunity for tobacco retailers to operate within the Town of Los Gatos. In the establishment of these regulations, the Town Council considered their effects on the number and suitability of locations for tobacco retailers.

NOW THEREFORE, it is the intent of the Town Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the Town and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

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

SECTION I.

Los Gatos Town Code Article VI – Smoking Regulations Section 18.60.020 is hereby added to read as follows:

Sec. 18.60.020 – Permits for retailers of tobacco products and/or electronic smoking devices.

(a) *Intent.* This Section is adopted to:

1. Ensure compliance with the business standards and practices of the Town;
2. Encourage responsible retailing of tobacco products and electronic smoking devices;
3. Discourage violations of laws related to tobacco products and electronic smoking devices, especially those that prohibit or discourage the sale or distribution of tobacco products and electronic smoking devices to persons under 21; and
4. Protect the public health and welfare.

This Section does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.

(b) *Definitions.*

For the purposes of this Section, the following definitions shall apply:

1. *Arm's length transaction* means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Section is not an arm's length transaction.
2. *Designee* means the agency selected or designated by the Town to enforce or administer the provisions of this Section.
3. *Electronic smoking device* means (1) an electronic and/or battery-operated device that can deliver an inhalable dose of nicotine to the user or (2) any product intended or sold for use with such a device. "Electronic smoking device" includes any product meeting this definition, regardless of whether it is manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, electronic vape, vaporizer or any other product name or descriptor.
4. *Ownership* means possession of a ten percent or greater interest in the stock, assets, or income of a business, other than a security interest for the repayment of debt.
5. *School* means a public or private elementary, middle, junior high or high school.

6. *Tobacco product* means (unless specifically noted elsewhere):
 - a. Any product subject to Subchapter IX [21 U.S.C. § 387 et seq. ("Subchapter IX")) of the Federal Food, Drug, and Cosmetic Act (See 21 U.S.C. § 387a(b) (products subject to Subchapter IX); 21 C.F.R. §§ 1100.1- 1100.3 (tobacco products subject to Subchapter IX)). Products subject to Subchapter IX include, but are not limited to, cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, cigars, pipe tobacco, waterpipe tobacco, and electronic nicotine delivery systems (such as; but not limited to, electronic cigarettes, electronic cigars, electronic hookahs, vape pens, personal vaporizers, and electronic pipes). Products subject to Subchapter IX also include components or parts of tobacco products, such as, but not limited to, liquids that are for use in an electronic nicotine delivery system and that contain tobacco or nicotine or are derived from tobacco or nicotine ("e-liquids"), vials that contain e-liquids, and atomizers. Products that are not subject to Subchapter IX include accessories of tobacco products, such as, but not limited to, ashtrays, spittoons, and conventional matches and lighters that solely provide an external heat source to initiate but not maintain combustion of a tobacco product
 - b. Any product for use in an electronic nicotine delivery system, whether or not it contains tobacco or nicotine or is derived from tobacco or nicotine.
7. *Retailer* means any person who sells, exchanges, or offers to sell or exchange, for any form of consideration, tobacco products and/or electronic smoking devices. "Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products or electronic smoking devices sold, exchanged, or offered for sale or exchange.

(c) *Requirements and prohibitions.*

1. *Permit required.* It shall be unlawful for any person to act as a retailer of tobacco products and/or electronic smoking devices in the Town of Los Gatos without first obtaining and maintaining a valid retailer permit pursuant to this Section for each location at which that activity is to occur. Tobacco product retailing without a valid tobacco retailer permit is a nuisance as a matter of law.
2. *Lawful business operation.* It shall be a violation of this Section for any retailer to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices, or the retailing of such products.
3. *Display of permit.* Each current retailer permit shall be prominently displayed in a publicly visible place at the permitted location.
4. *Notice of minimum age for purchase of electronic smoking devices.* Retailers shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products and electronic smoking devices to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Town or its Designee.
5. *Positive identification required.* No retailer shall sell or transfer a tobacco product or electronic smoking device to another person who appears to be under 30 years of age without first examining the customer's identification to confirm that the customer is at

least the minimum age required under state law to purchase and possess the tobacco product.

6. *False and misleading advertising prohibited.* A retailer either without a valid retailer permit or with a suspended retailer permit:
 - a. Shall keep all tobacco products and electronic smoking devices out of public view.
 - b. Shall not display any advertisement relating to tobacco products or electronic smoking devices that promotes the sale or distribution of such products from the retailer's location or that could lead a reasonable consumer to believe that tobacco products or electronic smoking devices can be obtained at that location.
7. *Limitation on storefront advertising.* No more than 15 percent of the square footage of the windows and clear doors of an establishment used for retailing shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to an establishment where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises by a person standing outside the premises.
8. *Flavored tobacco products.*
 - a. Except as permitted in paragraph (c) of this subsection (8), no retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor or aroma of the tobacco product, smoke or vapor produced by the tobacco product.
 - b. A tobacco product shall be subject to a rebuttable presumption that the product is prohibited by paragraph (a) of this subsection if:
 - (i) The product's manufacturer or any other person associated with the manufacture or sale of tobacco products makes or disseminates public statements or claims to the effect that the product has or produces a characterizing flavor or aroma, other than tobacco; or
 - (ii) The product's label, labeling, or packaging includes a statement or claim including any text and/or images used to communicate information that the product has or produces a characterizing flavor or aroma other than tobacco.
 - c. Paragraph (a) of this subsection (8) shall not apply to any retailer that meets all of the following criteria:
 - (i) Primarily sells tobacco products;
 - (ii) Generates more than 60 percent of its gross revenues annually from the sale of tobacco products;
 - (iii) Does not permit any person under 21 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the Family Code;
 - (iv) Does not sell alcoholic beverages or food for consumption on the premises; and

- (v) Posts a sign outside the retail location that clearly, sufficiently, and conspicuously informs the public that persons under 21 years of age are prohibited from entering the premises.
- 9. Vending machines prohibited. No tobacco product or electronic smoking device shall be sold, offered for sale, or distributed to the public from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.
- 10. Prohibition on sale or distribution of tobacco products or electronic smoking devices to persons under 21 years. No retailer shall sell, offer for sale, or distribute any tobacco product or electronic smoking device to any individual who is under 21 years of age.

(d) Eligibility requirements for a permit.

- 1. No retailer permit may be issued to authorize retailing at other than a fixed location. For example, retailing by persons on foot or from vehicles is prohibited.
- 2. No retailer permit may be issued to authorize retailing at a temporary or recurring temporary event. For example, retailing at flea markets and farmers' markets is prohibited.
- 3. No retailer permit may be issued to authorize retailing at any location where the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription drugs are offered for sale.
- 4. No retailer permit may be issued to authorize retailing at any location within 1,000 feet of a school, as measured by a straight line between any point along the property line of any parcel on which a school is located and any point along the perimeter of the applicant's proposed business location; provided, however, that the prohibition contained in this subsection (d)(4) shall not apply to the following:
 - a. Any retailer of tobacco products operating lawfully on the date immediately prior to this Section becoming effective; and
 - b. Any retailer of electronic smoking devices operating lawfully on the date immediately prior to this Section becoming effective; and
 - c. Any lawfully operating retailer of tobacco products that would otherwise become ineligible to receive or renew a retailer permit due to the creation or relocation of a school.
- 5. No retailer permit may be issued to authorize retailing at a location which is within 500 feet of a location occupied by another retailer, as measured by a straight line between any point along the property line of any parcel on which a retailer is located and any point along the perimeter of the applicant's proposed business location, provided, however, that the prohibition contained in this subsection (d)(5) shall not apply to:
 - a. Existing retailers of tobacco products operating lawfully on the date immediately prior to this Section becoming effective; and

- b. Existing retailers of electronic smoking devices operating lawfully on the date immediately prior to amendment of this Section to regulate the retailing of electronic smoking devices.
- 6. Any exemption granted to a retailer pursuant to this Section shall cease to apply upon the earlier of the following to occur:
 - a. The retailer fails to timely renew the retailer permit pursuant to this Section.
 - b. A new person obtains ownership in the business.

(e) *Application procedure.*

- 1. It is the responsibility of each retailer to be informed of all laws applicable to retailing, including those laws affecting the issuance of a retailer permit. No retailer may rely on the issuance of a retailer permit as a determination by the Town that the retailer has complied with all laws applicable to retailing. A retailer permit issued contrary to this Section, contrary to any other law, or on the basis of false or misleading information supplied by a retailer shall be revoked pursuant to this Section.
- 2. All retailer permit applications shall be submitted on a form supplied by the Town or its Designee to implement this Section.
- 3. A permitted retailer shall inform the Town or its Designee in writing of any change in the information submitted on an application for a retailer permit within 14 calendar days of a change.
- 4. All information specified in an application pursuant to this Section shall be subject to disclosure under the California Public Records Act (Government Code Section 6250 et seq.) or any other applicable law, subject to any exemptions.

(f) *Issuance of permit.*

- 1. Upon the receipt of a complete application for a retailer permit, the application fee, and the annual permit fee, the Town or its Designee shall issue a retailer permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:
 - a. The information presented in the application is inaccurate or false.
 - b. The application seeks authorization for retailing at a location for which this Section prohibits issuance of a retailer permit.
 - c. The application seeks authorization for retailing by a person to whom this Section prohibits issuance of a retailer permit.
 - d. The application seeks authorization for retailing that is prohibited pursuant to this Section (e.g., mobile vending) or that is unlawful pursuant to any other law.
- 2. A retailer permit shall be revoked if the Town finds that one or more of the bases for denial of a retailer permit under this Section existed at the time application was made or at any time before the retailer permit issued. Such a revocation shall be without prejudice to the filing of a new permit application.
- 3. A decision to deny issuance of a retailer permit or to revoke a retailer permit that has been wrongly issued may be appealed pursuant to this Section.

(g) *Permit term, renewal, and expiration.*

1. Term of permit. The term of a retailer permit is one year. A retailer permit is invalid upon expiration.
2. Renewal of permit. The Town or its Designee shall renew a valid retailer permit upon timely payment of the annual permit fee. The Town or its Designee may, in its discretion, agree to renew any expired retailer permit within the three-month period following expiration if the retailer pays the annual permit fee and applicable late charges. For every calendar month, or fraction thereof, that a retailer fails to renew an expired retailer permit, a late charge equal to 20 percent of the annual permit fee shall be assessed. A retailer permit renewed within three calendar months of expiration shall be treated as if timely renewed.
3. Issuance of permit after revocation or expiration of permit. To apply for a new retailer permit more than three calendar months after expiration of a retailer permit or following revocation of a retailer permit that was wrongly issued, a retailer must submit a complete application for a retailer permit, along with the application fee and annual permit fee. The Town or its Designee shall issue a retailer permit pursuant to the requirements of this Section.

(h) *Permits nontransferable.*

1. A retailer permit may not be transferred from one person to another or from one location to another. Whenever a new person obtains ownership in a business for which a retailer permit has been issued, a new retailer permit shall be required, but any exemption granted pursuant to Section (d) shall cease to apply.
2. Notwithstanding any other provision of this Section, prior violations of this Section at a location shall continue to be counted against a location and permit ineligibility and suspension periods shall continue to apply to a location unless:
 - a. One hundred percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners; and
 - b. The Town or its Designee is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in an arm's length transaction.

(i) *Permit conveys a limited, conditional privilege.*

Nothing in this Section shall be construed to grant any person obtaining and maintaining a retailer permit any status or right other than the limited, conditional privilege to act as a retailer at the location in the Town identified on the face of the permit.

(j) *Fees.*

The Town or its Designee shall not issue or renew a retailer permit prior to full payment of any applicable fees. The Town shall, from time to time, establish by resolution the fees to issue or to renew a retailer permit. The fees shall be calculated so as to recover the cost of administration and enforcement of this Section, including, for example, issuing a permit, administering the permit program, conducting retailer education, performing retailer inspection and compliance checks, documenting violations, and prosecuting violators, but shall not exceed the cost of the regulatory program authorized by this Section. All fees and interest earned from such fees shall be used exclusively to fund administration and enforcement of this Section.

(k) *Compliance monitoring.*

1. Compliance with this Section shall be monitored by the Town or its Designee. In addition, any peace officer may enforce the penal provisions of this Section. The Town Manager may designate any number of additional persons to monitor and facilitate compliance with this Section.
2. The Town or its Designee shall check each retailer at least once per 12-month period to determine if the retailer is complying with all laws applicable to retailing, other than those laws regulating underage access to tobacco products or electronic smoking devices. Nothing in this paragraph shall create a right of action in any retailer or other person against the Town or its agents.

(l) *Prevention of underage sales.*

1. The Town or its Designee shall check each retailer to determine whether the retailer is conducting business in a manner that complies with laws regulating youth access to tobacco products or electronic smoking devices. Nothing in this paragraph shall create a right of action in any retailer or other person against the Town or its agents.
2. The Town or its Designee shall not enforce any law establishing a minimum age for tobacco product or electronic smoking device purchases or possession against a person who otherwise might be in violation of such law because of the person's age ("Youth Decoy") if the potential violation occurs when:
 - a. The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the Town;
 - b. The Youth Decoy is acting as an agent of a person designated by the Town to monitor compliance with this Section; or
 - c. The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Town, or the California Department of Public Health.

(m) *Penalties for a violation by a retailer with a permit.*

1. In addition to any other penalty authorized by law, an administrative fine shall be imposed and a retailer permit shall be suspended if any court of competent jurisdiction determines, or the Town or its Designee finds based on a preponderance of the evidence, after the retailer is afforded notice and an opportunity to be heard, that the retailer, or any of the retailer's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Section, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to such a violation.
2. Amount of fine. Each such violation shall be subject to an administrative fine as follows:
 - a. A fine not to exceed \$100.00 for a first violation within a 12-month period;
 - b. A fine not to exceed \$200.00 for a second violation within a 12-month period; and
 - c. A fine not to exceed \$500.00 for each additional violation within a 12-month period.
3. Time period for permit suspension.
 - a. For a first violation of this Section at a location within any 24-month period, the retailer permit shall be suspended for up to 30 calendar days.
 - b. For a second violation of this Section at a location within any 24-month period, the retailer permit shall be suspended for up to 90 calendar days.
 - c. For each additional violation of this Section at a location within any 24-month period, the retailer permit shall be suspended for up to one year.
4. Waiver of penalties for first violation. The Town or its Designee may waive any penalties for a retailer's first violation of any requirement, condition or prohibition of this Section, other than a violation of a law regulating youth access to tobacco products or electronic smoking devices, if the retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Town's or its Designee's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
5. Corrections period. The Town or its Designee shall have discretion to allow a retailer a period of time to correct any violation of any requirement, condition or prohibition of this Section, other than a violation of a law regulating youth access to tobacco products or electronic smoking devices. If a retailer's violation is corrected within the time allowed for correction, no penalty shall be imposed under this Section.
6. Appeals. Any penalties imposed under this Section may be appealed pursuant to Section A18-381 of this Section.

(n) *Penalties for retailing without a permit.*

1. *Administrative fine.* In addition to any other penalty authorized by law, an administrative fine and an ineligibility period for application or issuance of a retailer permit shall be imposed if a court of competent jurisdiction determines, or the Town or its Designee finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any person has engaged in retailing at a location without a valid retailer permit, either directly or through the person's agents or employees, has

pled guilty, "no contest" or its equivalent to such a violation, or has admitted to such a violation.

2. *Amount of fine.* Each such violation shall be subject to an administrative fine as follows:
 - a. A fine not to exceed \$100.00 for a first violation within a 12-month period;
 - b. A fine not to exceed \$200.00 for a second violation within a 12-month period; and
 - c. A fine not to exceed \$500.00 for each additional violation within a 12-month period.
3. *Time period for permit ineligibility.*
 - a. For a first violation of this Section at a location within any 24-month period, no new retailer permit may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until 30 calendar days have passed from the date of the violation.
 - b. For a second violation of this Section at a location within any 24-month period, no new retailer permit may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until 90 calendar days have passed from the date of the violation.
 - c. For each additional violation of this Section at a location within any 24-month period, no new retailer permit may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until one year has passed from the date of the violation.
4. *Waiver of penalties for first violation.* The Town or its Designee may waive any penalties for a retailer's first violation of this Section, unless the violation also involves a violation of a law regulating youth access to tobacco products or electronic smoking devices, if the retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Town's or its Designee's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
5. *Appeals.* Any penalties imposed under this Section may be appealed pursuant to this Section.

(o) *Appeals.*

1. A decision to deny issuance of a retailer permit, to revoke a retailer permit that has been wrongly issued, or to impose penalties for a violation of this Section can be appealed to a hearing officer, subject to the following requirements and procedures. The hearing officer shall be the Town Manager or its Designee.
2. All appeals must be in writing, state the grounds asserted for relief and the relief sought, and be filed with the Town or its Designee within ten calendar days of receipt of notice of the appealed action. If such an appeal is made, it shall stay enforcement of the appealed action.
3. No later than 15 calendar days after receipt of the appeal, the hearing officer shall set an appeal hearing at the earliest practicable time and shall give notice of the hearing to the parties at least ten calendar days before the date of the hearing.

4. Neither the provisions of the Administration Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings shall apply to such hearing. At the hearing, the hearing officer may admit any evidence, including witnesses, relevant to the determination of the matter, except as otherwise provided in Section A18-382(c) of this Section. A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.
5. The hearing officer may continue the hearing from time to time, in his or her sole discretion, to allow for orderly completion of the hearing.
6. After the conclusion of the hearing, the hearing officer shall issue a written decision, which shall be supported by substantial evidence. Notice of the written decision, including findings of facts, conclusions of law, and notification of the time period in which judicial review may be sought pursuant to Code of Civil Procedure Section 1094.6, shall be served upon all parties no later than 20 calendar days following the date on which the hearing closed. Any decision rendered by the hearing officer shall be a final administrative decision.

(p) *Enforcement.*

1. Any violation of this Section is hereby declared to be a public nuisance.
2. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Section shall also constitute a violation of this Section.
3. Whenever evidence of a violation of this Section is obtained in any part through the participation of a person under the age of 18 years old, such a person shall not be required over his or her objection to appear or give testimony in any civil or administrative process brought to enforce this Section and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
4. Violations of this Section may be remedied by a civil action brought by the Town, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For the purposes of the civil remedies provided in this Section, each day on which a tobacco product or electronic smoking device is offered for sale in violation of this Section, and each individual retail tobacco product or electronic smoking device that is distributed, sold, or offered for sale in violation of this Section, shall constitute a separate violation of this Section.
5. Any person found guilty of violating any provision of this Section shall be deemed guilty of an infraction, punishable as provided by California Government Code § 25132.
6. The remedies provided by this Section are cumulative and in addition to any other remedies available at law or in equity.

SECTION II

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 III

If any provision of this ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The Town Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION IV

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 V

This Ordinance shall take effect on January 1, 2018. 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 VI

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 2nd day of May, 2017, 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 May, 2017.

COUNCIL MEMBERS:

AYES: Marcia Jensen, Steve Leonardis, Rob Rennie, Barbara Spector, Mayor Marico Sayoc

NAYS: None.

ABSENT: None.

ABSTAIN: None.

SIGNED:

/s/ MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

/s/ CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____