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ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS AMENDING CHAPTER 18, ARTICLE VI SECTION 18.60.020 OF THE LOS GATOS TOWN CODE ENTITLED PERMITS FOR RETAILERS OF TOBACCO PRODUCTS TO PROHIBIT THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES PRODUCTS AND OTHER TOBACCO PRODUCTS

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

WHEREAS, on May 19, 2016 the Town Council adopted Ordinance 2254 to regulate smoking within the Town of Los Gatos to protect the public and environment from secondhand smoke; and

WHEREAS, on May 16, 2017 the Town Council adopted Ordinance 2259 adding Section 18.60.020 to the Town Code to require permits for retailers of tobacco products; and

WHEREAS, electronic cigarettes, also known as e-cigarettes, e-vaporizers, or electronic nicotine delivery systems are battery-operated devices that people use to inhale an aerosol that typically contains nicotine. In addition to nicotine, the aerosol from e-cigarettes may include up to 31 other components, including formaldehyde, acetaldehyde, glycidol, acrolein, acetol, and diacetyl. Several of these compounds are likely carcinogens, and acrolein is a powerful irritant; and

WHEREAS, electronic cigarettes often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

WHEREAS, The Surgeon General has declared the use of electronic cigarettes among youth an "epidemic" and nationwide, electronic cigarette use has increased at alarming rates since the first products became available about 10 years ago, and while there have been many successful efforts to reduce underage tobacco use, the growing availability of e-cigarettes has reversed those positive trends; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on November 5, 2019; and

WHEREAS, on November 5, 2019, the Town Council held a duly noticed public hearing and took testimony regarding this Ordinance to extend Interim Ordinance No. 2260 ("Extension Ordinance"); and

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WHEREAS, the Town Council has considered, and by adopting this Ordinance ratifies and adopts Staff Report dated October 31, 2019, describing the effects of tobacco products and electronic cigarettes.

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 repealed and reenacted to read as follows:

Sec. 18.60.020 – Permits for retailers of tobacco products.

(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;
- (3) Discourage violations of laws related to Tobacco Products, especially those that prohibit or discourage the Sale or Distribution of Tobacco Products and electronic smoking devices to persons under 21;
- (4) Respond to a new wave of addiction to Electronic Cigarette Products;
- (5) Reduce vulnerability to unexplained illnesses associated with Electronic Cigarette Products; and
- (6) 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. *Distribute or Distribution* means the transfer, by any Person other than a common carrier, of a Tobacco Product to another Person for Sale or personal consumption.

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4. *Electronic smoking device* means any of the following products:
 - (1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
 - (2) Any component, part, or accessory of such a device or delivery system that is used during its operation.
 - (3) Any flavored or unflavored liquid or substance containing nicotine, whether Sold separately or Sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.
 - (4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.
 - (5) Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if Sold separately. Electronic Cigarette Products shall not include any product that has been approved by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and Sold solely for such approved use. *See* 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.
5. *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. Notwithstanding any other definition in this Code, an Owner means a Person who possesses Ownership.
6. *Permit* means a valid permit issued by the Town or its Designee to a Person to act as a Retailer.
7. *Retailer* means any Person who Sells or Distributes Tobacco Products for any form of consideration. Retailing shall mean the doing of any of these actions. This definition is without regard to the quantity of Tobacco Products Sold or Distributed.
8. *School* means a public or private elementary, middle, junior high or high school.
9. *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 Cigarette Products. 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.

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(c) *Requirements and prohibitions.*

1. *Permit required.* It shall be unlawful for any Person to act as a Retailer in the Town of Los Gatos without first obtaining and maintaining a Permit pursuant to this Section for each location at which Retailing occurs.
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, or the Retailing of such Tobacco Products.
3. *Display of Permit.* Each Permit shall be prominently displayed in a publicly visible place at the location identified in the Permit.
4. *Notice of minimum age for purchase of Tobacco Products.* Retailers shall post conspicuously, at each point of purchase, a notice stating that selling Tobacco Products 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 Distribute a Tobacco Product to another individual who appears to be under 30 years of age without first examining the individual's identification to confirm that the individual is at least the minimum age required under state law to purchase and possess the Tobacco Product.
6. *Minimum age for individuals selling Tobacco Products.* No individual who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Retailing.
7. *False and misleading advertising prohibited.* A Retailer without a Permit:
 - a. Shall keep all Tobacco Products out of public view.
 - b. Shall not display any advertisement relating to Tobacco Products 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 can be obtained at that location.
8. *Limitation on storefront advertising.* No more than 15 percent of the square footage of the windows and clear doors of physical storefront used for Retailing Tobacco Products 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 of this subsection 8. shall not apply to an establishment where there are no windows or clear doors, or where existing windows are located at a height that precludes a view of the interior of the premises by an individual standing outside the premises.
9. *Flavored Tobacco Products.*
 - a. 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,

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chocolate, cherry, mint, menthol, 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.

10. *Vending machines prohibited.* No Tobacco Product shall be Sold 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.
11. *Prohibition on Sale or Distribution of Tobacco Products to persons under 21 years.* No Retailer shall Sell or Distribute any Tobacco Product to any individual who is under 21 years of age.
12. *Prohibition on Sale or Distribution of Electronic Cigarette Products.* No Retailer that is issued a new Permit after December 19, 2019 shall Sell or Distribute Electronic Cigarette Products after Permit issuance. No Retailer that receives a Permit renewal after December 19, 2019 shall Sell or Distribute Electronic Cigarette Products after Permit renewal. Regardless of the date of Permit issuance or renewal, no Retailer shall Sell or Distribute Electronic Cigarette Products after June 30, 2020.

(d) *Eligibility requirements for a permit.*

1. No Permit may be issued to authorize Retailing at or from other than a fixed location. For example, Retailing by Persons on foot or from vehicles is prohibited.
2. No 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 Permit may be issued to authorize Retailing at any location where the profession of pharmacy is practiced by a pharmacist licensed by the State in accordance with the Business and Professions Code and where prescription drugs are offered for Sale.
4. No 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 January 1, 2018 (the effective date of the predecessor Ordinance Code); and

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- b. Any Retailer of electronic smoking devices operating lawfully on January 1, 2018 (effective date of predecessor Ordinance Code), however, any such Retailer is subject to the prohibition on the Sale and Distribution of Electronic Cigarette Products established in Section (c) (12) of this Ordinance; and
 - c. Any lawfully operating Retailer of Tobacco Products that would otherwise become ineligible to receive or renew a Permit due to the creation or relocation of a School.
5. No 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 Permit applicant's proposed business location, provided, however, that the prohibition contained in this subsection (d)(5) shall not apply to:
- a. Any Retailer of Tobacco Products operating lawfully on January 1, 2018 (effective date of predecessor Ordinance Code); and
 - b. Any Retailers of electronic smoking devices operating lawfully on January 1, 2018 (effective date of predecessor Ordinance Code); however, any such Retailer is subject to the prohibition on the Sale and Distribution of Electronic Cigarette Products established in in Section (c) (12) of this Ordinance.
6. Any exemption granted to a Retailer pursuant to subsection 4 and 5 shall cease to apply upon the earlier of the following to occur:
- a. The Retailer fails to timely renew the 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 Permit. No Retailer may rely on the issuance of a Permit as a determination by the Town that the Retailer has complied with all laws applicable to Retailing. A 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 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 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.

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(f) *Issuance of permit.*

1. Upon the receipt of a complete application for a Permit, the application fee, and the annual Permit fee, the Town or its Designee shall issue a 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 Permit.
 - c. The application seeks authorization for Retailing by a Person to whom this Section prohibits issuance of a Permit.
 - d. The application seeks authorization for Retailing that is prohibited pursuant to this Section (e.g., mobile vending, Electronic Cigarette Products) or that is unlawful pursuant to any other law.
2. A Permit shall be revoked if the Town finds that one or more of the bases for denial of a Permit under this Section existed at the time application was made or at any time before the Permit was issued. Such a revocation shall be without prejudice to the filing of a new Permit application.

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

1. *Term of Permit.* The term of a Permit is one year. A Permit is invalid upon expiration.
2. *Renewal of Permit.* The Town or its Designee shall renew a valid Permit upon timely payment of the annual Permit fee. The Town or its Designee may, in its discretion, agree to renew any expired 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 Permit, a late charge equal to 20 percent of the annual Permit fee shall be assessed. A 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 Permit more than three calendar months after expiration of a Permit or following revocation of a Permit that was wrongly issued, a Retailer must submit a complete application for a 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 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 Permit has been issued, a new 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:

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- 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 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. All Permits are issued subject to the Town's right to amend this Section, and Retailers shall comply with all provisions of this Section, as amended.

(j) *Fees.*

The Town or its Designee shall not issue or renew a 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 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, Retailer education, Retailer inspection and compliance checks, documentation of violations, and prosecution of 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 individuals to monitor and facilitate compliance with this Section.
2. The Town or its Designee or other individuals designated to enforce the provisions of this Section 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. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the Town, its Designee 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. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the Town, its Designee, or its agents.
2. The Town or its Designee shall not enforce any law establishing a minimum age for Tobacco Product purchases against an individual who otherwise might be in violation of

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such law because of the individual'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 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. *Administrative fine.* In addition to any other penalty authorized by law, an administrative fine shall be imposed and a 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, 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.* The amount of the administrative fine for each such violation shall be 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.* The period of the suspension shall be as follows:
 - a. For a first violation of this Section at a location within any 60-month period, the Permit shall be suspended for up to 30 calendar days.
 - b. For a second violation of this Section at a location within any 60-month period, the Permit shall be suspended for up to 90 calendar days.
 - c. For each additional violation of this Section at a location within any 60-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, 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. If

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the Town or its Designee exercises its discretion to provide a Retailer's corrections period, and a Retailer's a retailer's violation is corrected within the time allowed for correction, no penalty shall be imposed under this Section.

6. *Written notice of penalties.* Whenever a fine is issued and/or a Permit is suspended based on a violation of this Section, the Town or its Designee shall provide the Retailer written notice of the violation and the fine and suspension, including when the suspension shall take effect.

(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 Permit shall be imposed if a court of competent jurisdiction determines, or the Town or its Designee finds based on a preponderance of evidence, that any Person has engaged in Retailing at a location without a valid 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.* The amount of the administrative fine for each such violation shall be 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 60-month period, no new 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 60-month period, no new 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 60-month period, no new 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, if the Retailer admits the violation

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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. *Written notice of penalties.* Whenever a fine is issued and/or a Permit is suspended pursuant to this section, the Department shall provide the Retailer written notice of the fine and suspension, including when the suspension shall take effect.
6. *Appeals.* Any penalties imposed under this Section may be appealed pursuant to this Section. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.

(o) *Appeals.*

1. Any Retailer served with a written notice of penalties may request an administrative hearing to appeal the existence of the violation, the amount of the fine, and/or the length of the suspension by returning a completed hearing request form to the Town or its Designee within 10 days from the date of the written notice of penalties.
2. The Retailer shall include the following in or with the hearing request form:
 - (a) A statement indicating the reason the Retailer contests the written notice of penalties;
 - (b) Any evidence the Retailer wants the Hearing Officer to consider;
 - (c) An advance deposit of the amount of any fine challenged; and
 - (d) The address of the Retailer and, if available, an email address that can be used for contact and correspondence by the Town or its Designee. The Retailer may request service of notice by mail.
3. The hearing request form shall be deemed filed on the date received by the Town or its Designee. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.
4. After receiving a timely hearing request form, the Town or its Designee shall schedule an administrative hearing. The Town or Designee shall provide the Retailer at least ten calendar days' written notice of the date, time, and place of the administrative hearing and the name of the Hearing Officer who will conduct the hearing. The notice shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
5. Between the time the Retailer requests the administrative hearing and the time of the Hearing Officer's decision, the Retailer, the Town and its Designee, and each of their representatives shall not engage in ex parte communications with the Hearing Officer regarding the matters at issue in the hearing.
6. The hearing shall be conducted by the Hearing Officer on the date, time, and place specified in the notice to the Retailer. A Retailer's failure to appear at the hearing shall

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constitute an abandonment of the hearing request and a failure to exhaust administrative remedies as a precedent to judicially challenge the existence of the violation and the imposition of the fine and suspension.

7. At the hearing, the Retailer and the Town or its Designee shall have the opportunity to present evidence, including witnesses, relevant to the Hearing Officer's determination of the matter. Neither the provisions of the Administrative 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. The Hearing Officer may admit any evidence, including witnesses, relevant to the determination of the matter.
 8. The written notice of penalties and any other reports prepared by or for the Town or its Designee concerning the violation shall be admissible and accepted by the Hearing Officer as prima facie evidence of the violation and the facts stated in those documents. The Hearing Officer may continue the hearing from time to time, in his or her sole discretion, to allow for its orderly completion of the hearing.
 9. After receiving the evidence submitted at the hearing, the Hearing Officer may further continue the hearing and request additional information from either the Town, its Designee or the Retailer.
 10. After considering the evidence and testimony submitted, the Hearing Officer shall issue a written decision regarding the matters properly raised in the request for administrative hearing. The Hearing Officer's decision, shall:
 - (a) Be based on a preponderance of the evidence.
 - (b) Include a statement of the reasons for the decision.
 - (c) Be issued within 20 calendar days of the close of the hearing.
 - (d) Be served on both the Retailer and the Town and its Designee. The decision shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
 11. Based on the Hearing Officer's decision, the Town or its Designee shall promptly refund to the Retailer any amount of the advance fine deposit the Town or its Designee is not entitled to.
 12. The Hearing Officer's written decision shall constitute the final administrative decision. of the Town.
- (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 an individual under the age of 21 years old, such individual shall not be

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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 or its Designee, 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 is offered for sale in violation of this Section, and each individual retail Tobacco Product that is distributed, Sold, or Distributed 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.

(q) *No conflict with federal or state law.*

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by, or in conflict with, federal or state law, rules, or regulations.

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.

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SECTION V

This Ordinance shall take effect on January 1, 2020. 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 November 5, 2019 and adopted by the following vote as an ordinance of the Town of Los Gatos at a meeting of the Town Council of the Town of Los Gatos on November 16, 2019.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS
GATOS
LOS GATOS, CALIFORNIA

ATTEST:

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