



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/01/2019

ITEM NO: 11

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DATE: September 25, 2019  
TO: Mayor and Town Council  
FROM: Robert Schultz, Town Attorney  
SUBJECT: Review of Tobacco Retailers Ordinance and Annual Report from County of Santa Clara on Implementation of the Ordinance and Discuss Potential Amendments to the Ordinance to Prohibit the Sale of Electronic Smoking Devices

**RECOMMENDATION:**

Staff recommends that Council discuss and provide direction on whether staff should draft amendments to the Tobacco Retailers Ordinance regarding the prohibition of electronic smoking device sales.

**BACKGROUND:**

In 2016, the Town Council recognized the dangers of smoking and secondary smoke and adopted amendments to the Town's Smoking Regulations to prohibit smoking in the Town's public spaces, including outdoor dining areas, entryways, public events, recreation areas, and service areas and multi-family residential units. In addition, in 2017, the Town Council adopted an ordinance (Attachment 1) to address regulating the sales of tobacco by businesses in Los Gatos. The primary components of the Ordinance are:

- Require all establishments selling tobacco products to obtain a Tobacco Retailing Permit (TRP) from the Town.
- Require an annual Permit renewal.
- Require an annual inspection of the premises for compliance with the requirements.
- Require TRP be displayed in a publicly visible location at the licensed location.
- Prohibit the sale or transfer of tobacco products to anyone under the age of 21.
- Prohibit a person under the age of 21 to engage in tobacco retailing.
- Prohibit all self-service displays of tobacco products.
- Prohibit the sale of flavored tobacco products.
- Prohibit the sale of tobacco products in pharmacies.

**PREPARED BY:** Robert Schultz  
Town Attorney

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Reviewed by: Town Manager, Assistant Town Manager, and Finance Director

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BACKGROUND (continued):

- Prohibit new tobacco retailing within 1,000 feet of a school, parks, and playgrounds.
- Prohibit any new tobacco retailers within 500 feet of another tobacco retailer.
- Include fines for permit violations.
- Allow for a process for Permit suspension and revocation for violations.

After the Tobacco Retailers Ordinance was adopted by the Town Council, the Town entered into an Agreement with the County of Santa Clara that allowed the County of Santa Clara to administer the ordinance and collect the annual permit fees. Attachment 2 is an Annual Report from the County of Santa Clara on the implementation and enforcement of our Tobacco Retailer ordinance.

DISCUSSION:

The Town Council did not include this topic at its Strategic Priorities goal setting session or as an identified Ordinance for the Town Attorney to work on. The Mayor, at his discretion, has requested this item be placed on the agenda.

The Mayor's primary concern for needing amendments to our Tobacco Retail Ordinance are associated with the growth in sales of e-cigarettes, electronic smoking devices and electronic smoking device paraphernalia, such as vaping devices. According to many studies, the sale of electronic cigarettes poses a risk to public health. In addition, most electronic cigarettes have not obtained a premarket review order from the U.S. Food and Drug Administration to determine their appropriateness for the protection of the public health.

Virtually all e-cigarettes are considered "new tobacco products" under the Family Smoking Prevention and Tobacco Control Act enacted by Congress in 2009. The U.S. Food and Drug Administration (FDA) is responsible for conducting a premarket review of all new tobacco products not on the market as of February 15, 2007. The FDA's premarket review process is intended to determine if a tobacco product is appropriate for the protection of the public health "with respect to the risks and benefits to the population as a whole, including users and nonusers of the tobacco product, and taking into account- (A) the increased or decreased likelihood that existing users of tobacco products will stop using such products; and (B) the increased or decreased likelihood that those who do not use tobacco products will start using such products."

Tobacco companies are required to report to the FDA for premarket review any information concerning health risks, the components, ingredients, additives, and manufacturing methods.

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DISCUSSION (continued):

Unfortunately, nearly all e-cigarettes on the market have not obtained a premarket review order and the FDA has not taken appropriate action to enforce the requirements of the Tobacco Control Act.

Nationwide, electronic cigarette use has increased at alarming rates since the first products became available about 10 years ago. While there have been many successful efforts to reduce underage tobacco use, the growing availability of e-cigarettes has reversed those positive trends. The Town's current regulations prohibit the sale of all electronic cigarette products that have "a constituent or additive, an artificial or natural flavor or aroma..."

The Mayor has expressed an interest in protecting the public, particularly our youth, from products that contribute substantially to increased drug use and exposure to harmful substances. Both the Mayor and Town Attorney have attended seminars related to this topic and the materials and other articles are included in Attachment 3 and 4.

If the Council desires, an amendment could be drafted to expand the prohibition on electronic cigarette products to include any device or delivery system which can be used to consume nicotine in aerosolized or vaporized form. Products would be identified as prohibited for sale if they are "new tobacco products" which require FDA premarket review and have not been issued an order approving their marketing.

CONCLUSION:

Council should discuss and provide direction on whether staff should draft amendments to the Tobacco Retailers Ordinance.

Attachments:

1. Ordinance No. 2259
2. Los Gatos Tobacco Retail Permit Annual Summary
3. Material Received from Mayor Leonardis
4. Material Received from Bay Area City Attorneys Meeting