
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~~ Retailing of tobacco-Tobacco productsProducts;
- (3) Discourage violations of laws related to ~~tobacco-Tobacco productsProducts~~, especially those that prohibit or discourage the sale or distribution of ~~tobacco-Tobacco productsProducts~~ and ~~electronic Electronic smoking devicesCigarette Products~~ to persons under twenty-one (21);
- (4) Respond to a new wave of addiction to ~~electronic-Electronic cigarette-Cigarette productsProducts~~;
- (5) Reduce vulnerability to unexplained illnesses associated with ~~electronic-Electronic cigarette-Cigarette productsProducts~~; and
- (6) Protect the public health and welfare.

This ~~section-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 ~~sectionSection~~, 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 ~~(2)-~~ 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 ~~Ssection~~ is not an ~~Aarm's Llength Ttransaction~~.
- (2) *Department* means the County of Santa Clara's Department of Environmental Health and any agency or person designated by the Director of the Department of Environmental Health to enforce or administer the provisions of this Section.
- (3) *Designee* means the agency selected or designated by the Town to enforce or administer the provisions of this Section.
- ~~(2)(3)~~ *Designee* means the agency selected or designated by the Town to enforce or administer the provisions of this section.
- ~~(3)(4)~~ *Distribute or distribution* means the transfer, by any person other than a common carrier, of a ~~Ttobacco pProduct~~ to another person for sale or personal consumption.
- ~~(4)(5)~~ *~~Electronic smoking device~~ Electronic Cigarette Products* means any of the following products:
 - a. 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.
 - b. Any component, part, or accessory of such a device or delivery system that is used during its operation.
 - c. 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.
 - d. 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.
 - e. ~~Electronic cigarette-Cigarette Pproducts~~ 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~~ ~~Cigarette~~ ~~P~~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 ~~S~~subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

~~(6)~~ ~~Hearing Officer~~ shall mean the ~~Office of the County Hearing Officer for this Section only~~ ~~hearing officer appointed by the Town or its Designee to hear appeals. So long as the Town's Designee is the Department, the Hearing Officer shall be the hearing officer appointed by the Department by the Department in accordance with County of Santa Clara Ordinance County Code ("County Ordinance Code") of Ordinance Ssection A38-4.. have the meaning set forth in Chapter 1, Article III, of the Town Code.~~

(6) *Impound* means the legal control exercised by the ~~Department~~ ~~Town~~ or its Designee over the use, sale, disposal, or removal of any Tobacco Products.

~~(5)~~(7) *Ownership* means possession of a ten ~~(10)~~ 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)~~(8) *Permit* means a valid permit issued by the ~~Town or its designee~~ ~~Designee~~ ~~Town or its Designee~~ ~~Department~~ to a person to act as a ~~retailer~~ ~~Retailer~~.

(7)(9) *Retailer* means any person who sells or ~~distributes~~ ~~distributes~~ ~~T~~tobacco ~~P~~products for any form of consideration, whether or not they possess a current Permit. Retailing shall mean the doing of any of these actions. This definition is without regard to the quantity of ~~T~~tobacco ~~P~~products sold or distributed.

~~(8)~~(10) *School* means a public or private elementary, middle, junior high or high school.

~~(9)~~(11) *Tobacco Pproduct* 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) and Electronic Cigarette Products]. Products subject to subchapter IX include, but are not limited to, cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, cigars, pipe tobacco, and 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.

(c) *Requirements and prohibitions.*

- (1) *Permit required.* It shall be unlawful for any person to act as a ~~retailer~~ ~~Retailer~~ in the Town of Los Gatos without first obtaining and maintaining a ~~P~~permit pursuant to this ~~S~~section for each location at which ~~retailing~~ ~~Retailing~~ occurs.
- (2) *Lawful business operation.* It shall be a violation of this ~~S~~section for any ~~R~~retailer to violate any local, state, or federal law applicable to ~~T~~tobacco ~~P~~products, or the ~~retailing~~ ~~Retailing~~ of such ~~T~~tobacco ~~P~~products.
- (3) *Display of Ppermit.* Each ~~P~~permit shall be prominently displayed in a publicly visible place at the location identified in the ~~P~~permit.
- (4) *Notice of minimum age for purchase of Ttobacco Pproducts.* Retailers shall post conspicuously, at each point of purchase, a notice stating that selling ~~T~~tobacco ~~P~~products to anyone under twenty-one (21)

years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Town or its Designee ~~Designee Department~~ Town or its Designee.

- (5) *Positive identification required.* No ~~R~~etailer shall sell or distribute a ~~tobacco~~ Tobacco Pproduct or electronic smoking product to another ~~individual person~~ individual ~~who appears to be under thirty (30) years of age~~ without first examining the ~~individual's~~ individual's customer's identification to confirm that the ~~individual customer~~ individual is at least the minimum age required under sState law to purchase and possess the Ttobacco Pproduct.
- (6) *Minimum age for individuals selling Ttobacco Pproducts.* No individual who is younger than the minimum age established by state law for the purchase or possession of Ttobacco Pproducts shall engage in Rretailing.
- (7) *False and misleading advertising prohibited.* A Rretailer without a Ppermit:
 - a. Shall keep all Ttobacco Pproducts out of public view.
 - b. Shall not display any advertisement relating to Ttobacco Pproducts that promotes the sale or distribution of such products from the Rretailer's location or that could lead a reasonable consumer to believe that Ttobacco Pproducts can be obtained at that location.
- (8) *Limitation on storefront advertising.* No more than fifteen (15) percent of the square footage of the windows and clear doors of physical storefront used for ~~retailing~~ Retailing Ttobacco Pproducts 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 ~~only~~ located only at a height that precludes a view of the interior of the premises by an individual standing outside the premises.
- (9) *Flavored Ttobacco Pproducts.*
 - a. No Rretailer shall sell a Ttobacco Pproduct containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, mint, menthol, or coffee, that is a characterizing flavor or aroma of the Ttobacco Pproduct, smoke or vapor produced by the Ttobacco Pproduct.
 - b. A Ttobacco Pproduct shall be subject to a rebuttable presumption that the product is prohibited by paragraph (a) of this Ssubsection if:
 - (i) The product's manufacturer or any other person associated with the manufacture or sale of Ttobacco Pproducts 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 Ttobacco Pproduct 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.

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- (11) *Prohibition on ~~s~~Sale or ~~d~~Distribution of ~~T~~obacco ~~P~~products to ~~individuals~~persons under twenty-one (21) years.* No retailer shall sell or distribute any ~~T~~obacco ~~P~~product to any individual who is under twenty-one (21) years of age.
- (12) *Prohibition on ~~s~~Sale or ~~d~~Distribution of ~~E~~lectronic ~~C~~igarette ~~P~~products.* No person, whether or not issued a Permit, shall ~~s~~Sell or ~~d~~Distribute Electronic Cigarette Products. ~~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~~Permit.*
- (1) No ~~P~~permit may be issued to authorize ~~R~~etailing at or from other than a fixed location. For example, ~~retailing~~Retailing by persons on foot or from vehicles is prohibited.
- (2) No ~~P~~permit may be issued to authorize ~~retailing~~Retailing at a temporary or recurring temporary event. For example, ~~R~~etailing at flea markets and farmers' markets is prohibited.
- (3) No ~~P~~permit may be issued to authorize ~~R~~etailing 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 ~~P~~permit may be issued to authorize ~~R~~etailing at any location within one thousand (1,000) feet of a ~~S~~chool, as measured by a straight line between any point along the property line of any parcel on which a ~~S~~chool 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 ~~R~~etailer of ~~T~~obacco ~~P~~products operating lawfully on January 1, 2018 (the effective date of the predecessor Ordinance Code); and
- b. Any ~~R~~etailer of ~~electronic smoking devices~~Electronic Cigarette Products operating lawfully on January 1, 2018 (effective date of predecessor ~~o~~Ordinance Code), however, any such ~~R~~etailer is subject to the prohibition on the sale and distribution of ~~E~~lectronic ~~C~~igarette ~~P~~products established in subsection (c)(12) of this section; and
- c. Any lawfully operating ~~R~~etailer of ~~tobacco~~Tobacco ~~P~~products that would otherwise become ineligible to receive or renew a ~~P~~permit due to the creation or relocation of a ~~S~~chool.
- (5) No ~~P~~permit may be issued to authorize ~~r~~Retailing at a location which is within five hundred (500) feet of a location occupied by another ~~R~~etailer, as measured by a straight line between any point along the ~~property line of any parcel on which a R-retailer is located~~perimeter of an existing Retailer's business location and any point along the perimeter of the ~~P~~permit applicant's proposed business location, provided, however, that the prohibition contained in this ~~S~~ubsection (d)(5) shall not apply to:
- a. Any ~~R~~etailer of ~~T~~obacco ~~P~~products operating lawfully on January 1, 2018 (effective date of predecessor ~~o~~Ordinance Code); and
- b. Any ~~R~~etailers of ~~Electronic Cigarette Products~~electronic smoking devices operating lawfully on January 1, 2018 (effective date of predecessor ~~o~~Ordinance Code); however, any such ~~R~~etailer is subject to the prohibition on the sale and distribution of ~~E~~lectronic ~~C~~igarette ~~P~~products established in in ~~S~~ubsection (c)(12) of this ~~S~~ection.
- (6) Any exemption granted to a ~~R~~etailer pursuant to subsection (4) and (5) shall cease to apply upon the earlier of the following to occur:
- a. The ~~R~~etailer fails to timely renew the ~~P~~permit pursuant to this ~~S~~ection.

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 ~~r~~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 ~~r~~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~~ Town or its Designee to implement this Section.
- (3) A permitted Retailer shall inform the ~~Town or its designee~~ Town or its Designee in writing of any change in the information submitted on an application for a Permit within fourteen (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 the laws' any exemptions.

(f) *~~Issuance of p~~Permit issuance, denial, and revocation.*

- (1) Upon the receipt of a complete application for a Permit, the application fee, and the annual Permit fee, the ~~Town or its designee~~ Town or its Designee shall issue a Permit unless substantial evidence demonstrates that one ~~(1)~~ 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 ~~r~~Retailing at a location for which this Section prohibits issuance of a Permit.
 - c. The application seeks authorization for ~~r~~Retailing by a person to whom this Section prohibits issuance of a Permit.
 - d. The application seeks authorization for a Retailer whose Permit has previously been revoked or who has otherwise violated any provision of this Chapter Section within the last 60 months.
 - ~~d.e.~~ The application seeks authorization for ~~r~~Retailing that is prohibited pursuant to this Section (e.g., mobile vending, Electronic Ceigarette Products) or that is unlawful pursuant to any other law.
 - f. The application seeks authorization for Retailing by a Retailer who has failed to pay any fees, penalties, or reinspection fees required by this Section.
- (2) A Permit shall be revoked if the ~~Town Department~~ Town or its Designee finds that:
 - ~~(a) — one (1) or more of the bases for denial of a Ppermit under this Ssection existed at the time application was made or at any time before the Ppermit was issued. Such a revocation shall be without prejudice to the filing of a new Permit application.; or~~
 - (3) A pPermit shall be permanently revoked if
 - ~~(b) — two (2) Tthe Retailer has committed three or more violations of this Section within 60 month period as specified in paragraph (m)(4) of this Section. Such a revocation shall be without prejudice to the filing of a new permit application.~~

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

- (1) *Term of Ppermit.* The term of a ~~p~~Permit is one ~~(1)~~ year. A Permit is invalid upon expiration.

(2) Conditions of Permit. As conditions of Permit issuance and retention, Retailer shall:

- a. Allow eCompliance inspections as described in Subsection (k) and expressly consent to inspection of all areas and records of a Retailer's business required to effectuate the purpose of this Section, including unlocking and allowing access to any area of the Retailer's business requested by any individual authorized to monitor and facilitate compliance with this Section.
- b. Comply with any order of the Department Town or its Designee to impound any product not authorized to be sold by this Section and cooperate with any Departmental seizure of any product, subject to appeal of those actions.
- c. Failure to comply with these Permit conditions may result in Permit suspension or revocation as described in Subsection (m).

~~(2)~~(3) Renewal of Ppermit. The ~~Town or its designee~~ Town or its Designee shall renew a valid Ppermit upon timely payment of the annual permit fee provided that the Retailer complies with this Section~~Section~~. The ~~Town or its designee~~ Town or its Designee may, in its discretion, agree to renew any expired Ppermit within the three-month period following expiration if the ~~R~~retailer pays the annual permit fee and applicable late charges. For every calendar month, or fraction thereof, that a ~~R~~retailer fails to renew an expired Ppermit, a late charge equal to twenty ~~(20)~~ percent of the annual Ppermit fee shall be assessed. A Ppermit renewed within three ~~(3)~~ calendar months of expiration shall be treated as if timely renewed.

~~(3)~~(4) Issuance of Ppermit after revocation or expiration of Ppermit. To apply for a new ~~retailer~~ Ppermit more than three ~~(3)~~ calendar months after expiration of a Ppermit or following revocation of a ~~retailer~~ Ppermit that was wrongly issued, a ~~R~~retailer must submit a complete application for a ~~retailer~~ Ppermit, along with the application fee and annual Ppermit fee. The ~~Town or its designee~~ Town or its Designee shall issue a ~~retailer~~ Ppermit pursuant to the requirements of this Ssection.

(h) Permits nontransferable.

(1) A ~~P~~permit may not be transferred from one ~~(1)~~ person to another or from one ~~(1)~~ location to another. Whenever a new person obtains ~~ownership~~ Ownership in a business for which a Ppermit has been issued, a new Ppermit shall be required, but any exemption granted pursuant to subsection (d) shall cease to apply.

(2) Notwithstanding any other provision of this Ssection, prior violations of this Ssection at a location shall continue to be counted against a location and Ppermit ineligibility and suspension periods shall continue to apply to a location unless:

- a. One hundred ~~(100)~~ 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 ~~(1)~~ or more new owners; and
- b. The ~~Town or its designee~~ Designee ~~Department~~ 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 ~~R~~Transaction.

(i) Permit conveys a limited, conditional privilege. Nothing in this Ssection shall be construed to grant any person obtaining and maintaining a Ppermit any status or right other than the limited, conditional privilege to act as a ~~R~~retailer at the location in the Town identified on the face of the Ppermit. All Ppermits are issued subject to the Town's right to amend this Ssection, and ~~R~~retailers shall comply with all provisions of this Ssection, as amended.

(j) Fees. The ~~Town or its designee~~ Town or its Designee shall not issue or renew a Ppermit ~~prior to~~ before full payment of any applicable fees. The ~~Town~~ Department County Board of Supervisors shall, from time to time,

establish by resolution the fees to issue or to renew a ~~retailer~~ permit, and, so long as the Department is the Town's Designee, the Town shall amend its fee schedule to reflect any changes to the County's schedule. 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 and routine 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~~ Town or its Designee. In addition, any peace officer may enforce the penal provisions of this section. The ~~Department~~ Town or its Designee ~~Town Manager~~ may designate any number of additional individuals to monitor and facilitate compliance with this Section.
- (2) The ~~Town or its designee~~ Town or its Designee or other individuals designated to enforce the provisions of this Section shall ~~check~~ monitor each ~~R~~retailer at least once per twelve-month period to determine if the ~~R~~retailer is complying with all laws applicable to ~~R~~retailing, other than those laws regulating underage access to ~~T~~obacco ~~P~~roducts. Nothing in this paragraph shall create a right of action in any ~~R~~retailer or other person against the Town, ~~its designee~~ its Designee, or ~~its~~ their agents.
- (3) Any Retailer found to be in violation of this Section shall pay all costs related to enforcement to ensure Retailer's compliance with this Section, including but not limited to, fees for reinspection to determine compliance after a violation, enforcement costs, litigation costs, and attorney fees in any administrative or civil matter in which the Town ~~Town or its designee~~ or its Designee prevails.

(l) *Prevention of underage sales.*

- (1) The ~~Town,~~ Town or its Designee ~~County designees, including Town or its designee~~ shall ~~check~~ monitor each ~~R~~retailer at least twice per 12-month period to determine whether the ~~R~~retailer is conducting business in a manner that complies with laws regulating youth access to ~~T~~obacco ~~P~~roducts. Nothing in this paragraph shall create a right of action in any ~~R~~retailer or other person against the Town, ~~its Designee,~~ its designee, or ~~their~~ its agents.
- (2) The ~~Town or its designee~~ Town or its Designee shall not enforce any law establishing a minimum age for ~~T~~obacco ~~P~~roduct purchases against an individual who otherwise might be in violation of such law because of the individual's age ("~~youth~~ Youth Decoy") if the potential violation occurs when:
 - a. The ~~y~~Youth ~~d~~Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the Town;
 - b. The ~~y~~Youth ~~d~~Decoy is acting as an agent of the Town to monitor compliance with this Section; or
 - c. The ~~y~~Youth ~~d~~Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the ~~County~~ 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, a Retailer shall pay a fine if the Retailer, or the Retailer's agents or employees, violates any of the requirements, conditions, or prohibitions of this Section. ~~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 of this Section~~ shall be as follows:

- a. A fine not to exceed one ~~thousand~~ hundred dollars (\$1,000.00) for each violation identified during the first instance in which the Retailer has committed a violation or violations; a first violation within a twelve-month period;
- b. A fine not to exceed two ~~thousand five~~ hundred dollars (\$2,500.00) for each violation identified during a subsequent instance if the Retailer has committed a previous violation or violations within a 60-month period; and a second violation within a twelve-month period; and
- c. A fine not to exceed five ~~thousand~~ hundred dollars (\$5,000.00) for each violation identified during a subsequent instance after the Retailer twice committed a previous violation or violations within a 60-month period. additional violation within a twelve-month period.

(3) *Time period for Permit suspension.* In addition to any other penalty authorized by law, the ~~Department-Town~~ or its Designee may suspend a Permit if the Town or its Designee ~~Department~~ demonstrates that the Retailer or any of the Retailer's agents or employees has violated any of the requirements, conditions, or prohibitions of this Section. The period of the suspension shall be as follows:

- a. A suspension not to exceed 30 calendar days for an initial violation. For a first violation of this section at a location within any sixty-month period, the permit shall be suspended for up to thirty (30) calendar days.
- b. A suspension not to exceed 180 calendar days if a Retailer commits a violation or violations during two instances within a 60-month period. For a second violation of this section at a location within any sixty-month period, the permit shall be suspended for up to ninety (90) calendar days.
- c. When a Permit is suspended based on a violation of this Section, the ~~Town or its designee~~ Designee-Town or its Designee Department shall post a placard at the physical location used for Retailing Tobacco Products to notify the general public of the suspension. The placard shall be:
For each additional violation of this section at a location within any sixty-month period, the retailer permit shall be suspended for up to one (1) year.

- (A) Posted in the front window of the storefront used for ~~R~~Retailing Tobacco Pøroducts within five feet of the front door; or
- (B) Posted in a display case mounted on the outside front wall of the physical location used for ~~R~~Retailing Tobacco Products within five feet of the front door; or
- (C) Posted in a location approved by the Town or its Designee~~Director~~ to ensure proper notice to the general public and to patrons of the physical location used for ~~R~~Retailing Tobacco Products.
- (D) Once attached to a building or structure, a placard is not to be removed, altered, or covered until done so by an authorized representative of the ~~Town or its~~ DdesigneeTown or its DesigneeDepartment or upon written notification from the ~~Town or its Ddesignee~~Town or its DesigneeDepartment.

(4) *Waiver or reduction of fines and penalties for first violation.* The ~~Town or its Ddesignee~~Town or its ~~DesigneeDepartment~~ may, in theirits sole discretion, waive or reduce any fines and penalties for a ~~R~~retailer's first violation of this ~~Section~~section any requirement, condition or prohibition of this section, other than a violation of a law regulating youth access to tobacco products, if the ~~R~~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 fines and suspension periods or revocation for any future violation. ~~penalties for any future violation.~~

This Subsection shall not apply to any violation involving a law regulating youth access to Tobacco Products or Electronic Cigarette Products.

- (5) *Corrections period.* The Town ~~or its or its designee~~ Designee shall have discretion to allow a ~~R~~retailer a period of time to correct any violation of any requirement, condition or prohibition of this ~~Section~~section, other than a violation of a law regulating youth access to ~~T~~obacco ~~P~~roducts ~~or Electronic Cigarette Products~~. If the Town or its ~~designee~~ Designee exercises its discretion to provide a ~~R~~retailer's corrections period and a ~~R~~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.~~
- (6) *Written notice of penalties.* Whenever a fine is issued and/or Permit is suspended or revoked based on a violation of this Section, the Town or its ~~Designee~~Department shall provide the Retailer written notice of the violation and the fine and suspension or revocation, including when the suspension or revocation shall take effect.
- ~~(7) *A appeals.* Any penalties imposed under this Section may be appealed pursuant to Subsection (o) of this Section.~~
- ~~(87) *A timely appeal shall stay enforcement of the appealed penalties until the final administrative decision of the Town or its designee*~~ DesigneeTown or its ~~Designee~~Department is issued.
- (n) *Penalties for ~~R~~etailing without a ~~permit~~Permit.*
- (1) *Administrative fine.* In addition to any other penalty authorized by law, a Retailer shall pay a fine if the Town or its designee ~~Designee~~Town or its ~~Designee~~Department demonstrates that the Retailer has engaged in Retailing at a location without a valid retailer permit, 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 of this Section shall be as follows:
- A fine not to exceed two thousand five ~~one~~ hundred dollars (\$~~1~~2,500.00) for each violation identified during the first instance in which the Retailer has committed a violation or violations without a valid Permit; a first violation within a twelve-month period;
 - A fine not to exceed five thousand ~~two hundred~~ dollars (\$25,000.00) for each violation identified during a subsequent instance if the Retailer has committed a previous violation or violations within a 60-month period without a valid Permit; and a second violation within a twelve-month period; and
 - A fine not to exceed ten thousand ~~five hundred~~ dollars (\$~~5~~10,000.00) for each violation identified during a subsequent instance after the Retailer has twice committed a previous violation or violations within a 60-month period without a valid Permit. additional violation within a twelve-month period.
- (3) *Time period for permit ineligibility.*
- ~~For a first violation of this section at a location within any sixty-month period, no new permit~~ For an initial violation of this Section without a valid Permit, no new Permit may be issued to for the

~~person or the location~~ Retailer or the location (unless ~~ownership~~ Ownership of the business at the location has been transferred in an ~~arm's~~ Arm's Length Transaction) until thirty (30) calendar days have passed from the date of the violation.

- b. ~~For a second violation of this section at a location~~ If a Retailer commits a violation or violations during two instances within any sixty-month period without a valid permit, no new ~~P~~ permit may be issued for the ~~Retailer or the location~~ person or the location (unless ~~Ownership~~ Ownership of the business at the location has been transferred in an ~~Arm's~~ Arm's Length Transaction) until ~~ninety (90) calendar days have one year~~ one year has passed from the date of ~~the second~~ the violation.
 - c. ~~For each additional violation of this section at a location within any sixty-month period, no new permit may be issued for the person or~~ If a Retailer commits a violation or violations during three instances within a 6024-month period, without a valid Permit, the Retailer and the location (unless ~~ownership~~ Ownership of the business at the location has been transferred in an ~~Arm's~~ Arm's Length Transaction) until ~~one (1) year has passed from the date of the violation~~ one (1) year has passed from the date of the violation. shall be permanently ineligible for a Permit.
- (4) Waiver or reduction of fines and penalties for first violation. The ~~Town or its designee~~ Town or its Designee may, in ~~its~~ its sole discretion, waive or reduce any fines and penalties for a ~~R~~ retailer's first violation of this ~~S~~ section, ~~unless the violation also involves a violation of a law regulating youth access to tobacco products~~; if the ~~R~~ retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the ~~Town's or its designee's~~ Town or its Designee's waiver of fines or penalties for a first violation, the violation will be considered in determining ~~the penalties for any future violation~~ the fines and suspension periods or revocation for any future violation. This Subsection shall not apply to any violation involving a law regulating youth access to Tobacco Products or Electronic Cigarette Products.
- (5) Written notice of penalties. Whenever a fine is issued and/or a ~~permit~~ Permit is suspended pursuant to this ~~S~~ section, the ~~department~~ Town or its ~~or its designee~~ Designee shall provide the ~~R~~ retailer written notice of the fine and suspension, including when the suspension shall take effect.
- (6) Appeals. Any penalties imposed under this ~~S~~ section may be appealed pursuant to ~~the appeals~~ Section (o) below ~~is section~~. ~~A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing until the final administrative decision of the County is issued.~~
- (o) Appeals.
- (1) Any ~~R~~ retailer served with a written notice of ~~penalties~~ violation may request an administrative hearing to appeal the existence of the violation, the amount of the fine, ~~and/or~~ the length of ~~at~~ the suspension, a revocation of a Permit, or the sustained impoundment and/or seizure of Tobacco Products by returning a completed hearing request form to the ~~Town or its designee~~ Department Office of the County Hearing Officer within ten ~~(10)~~ days from the date of the written notice of penalties.
 - (2) The ~~R~~ retailer shall include the following in or with the hearing request form:
 - a. A statement indicating the reason the ~~R~~ retailer contests the written notice of penalties;
 - b. Any evidence the ~~R~~ retailer wants the Hearing Officer to consider;
 - c. An advance deposit of the amount of any fine challenged; and
 - d. The address of the ~~R~~ retailer and, if available, an email address that can be used for contact and correspondence by the ~~Town or its designee~~ Office of the County Hearing Officer. The ~~R~~ retailer may request service of notice by mail.

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- (3) The hearing request form shall be deemed filed on the date received by the ~~Town or its designee~~ Department Office of the County Hearing Officer. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.
 - (4) After receiving a timely hearing request form, the ~~Hearing Officer~~ Town or its Designee shall notify the Town or its Designee as soon as practicable and then shall schedule an administrative hearing. The ~~Hearing Officer~~ Town or its Designee shall provide the Retailer at least ten (10) 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 or its Designee ~~Town and its designee~~, and each of their representatives shall not engage in ex parte communications with the ~~Hearing Officer~~ 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 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~~ 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, except as otherwise provided in Subsection (p)(3) of this Section.
 - (8) The written notice of penalties and any other reports prepared by or for the ~~Town or its Designee~~ 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 the Hearing Officer's 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~~ Town or its Designee or the ~~retailer~~ 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 twenty (20) calendar days of the close of the hearing.
 - d. Be served on both the Retailer and the ~~Town and its designee~~ Town or 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~~ Town or its Designee shall promptly refund to the Retailer any amount of the advance fine deposit the ~~Town or its designee~~ Town or its Designee is not entitled to and shall provide the remainder to the Town or its Designee.
 - (12) The Hearing Officer's written decision shall constitute the final administrative decision ~~of the Town.~~

(p) *Enforcement.*

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- (1) Any violation of this ~~section~~ Section is hereby declared to be a public nuisance.
 - (2) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ~~section~~ 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 twenty-one (21) years old, such ~~individual~~ a person shall not be required over their 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 legal~~ action brought by the ~~Town or its Designee~~ Town or its Designee ~~Town or its Designee County, 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 product tobacco product is offered for sale in violation of this Section, and each individual product which is sold, or distributed, in violation of 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 Section 25132.~~
 - (6) ~~The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.~~

(5) Impoundment.

(A) Based upon inspection findings or other evidence, the ~~Town or its designee~~ Town or its Designee may impound Tobacco Products that are suspected of being or found to be offered for sale or distribution in violation of this Section. The Town or its Designee may affix a label to the products that shall be removed only by the Town or its Designee following final written determination by the Town or its Designee as described below.

(B) No impounded Tobacco Products shall be used, removed, disposed, or offered for sale unless the impoundment has been released. This decision by the Town or its Designee may be appealed pursuant to the procedures set forth in Subsection (o). ~~in accordance with this Section.~~

(C) Within 30 days of final determination whether impounded products are authorized for sale under this Section, the ~~Town or its designee~~ Town or its Designee shall release the impounded materials or order that unauthorized, impounded product shall be destroyed and properly disposed of at the Retailer's expense after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to Subsection (o) has expired.

- (6) ~~Seizure.~~ Tobacco Products offered for sale in violation of this Section are subject to seizure by the ~~Town or its designee~~ Town or its Designee and shall be forfeited after the Retailer of the Tobacco Products seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products were not offered for sale in violation of this Section. This decision may be appealed in accordance with the procedure set forth this Section. Forfeited Tobacco Products shall be destroyed and properly disposed of at Retailer's expense after all internal appeals have been exhausted and after the time in which to seek judicial review has expired.

- (7) ~~Employees.~~ All Retailers are responsible for the actions of their employees relating to compliance with this Section. The sale, offer to sell, or furnishing of any Tobacco Products by an employee shall be considered an act of the Retailer.

(8) Remedies. 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~~ Section 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.

(r) *Section applicable to Retailing only.* Nothing in this Section shall be construed to penalize the purchase, use, or possession of a Tobacco Product by any person not engaged in the ~~R~~etailing of such products.

(Ord. No. 2297 , § I, 11-19-19; Ord. No. 2320 , § III, 9-7-21)

Editor's note(s)—Ord. No. 2297-, § I, adopted Nov. 19, 2019, repealed § 18.60.020 and enacted new provisions to read as herein set out. Former § 18.60.020 pertained to permits for retailers of tobacco products and/or electronic smoking devices, and derived from Ord. No. 2259 , § I, adopted May 16, 2017.

