



# City of Palo Alto

## City Council Staff Report

(ID # 11005)

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**Report Type: Consent Calendar**

**Meeting Date: 5/4/2020**

**Summary Title: Tobacco Retail Permit 4.64 Ordinance Revisions**

**Title: Adoption of Amendments to the City of Palo Alto Tobacco Retail Ordinance (PAMC Chapter 4.64) to Further Restrict Electronic Cigarette Products and Flavored Tobacco Products, Direct Staff to Discuss Amending the Tobacco Retail Permit (TRP) Agreement With the County, and Updates to Council's Previous Questions on Reducing Youth Tobacco use**

**From: City Manager**

**Lead Department: Public Works**

### **Recommendation**

Per Council direction from the December 9, 2019 Council Meeting, staff recommends that Council:

1. Adopt amendments to the Tobacco Retail Permit (TRP) Ordinance (Municipal Code Chapter 4.64) (Attachment A) which will further restrict sales of flavored and electronic tobacco products, exempt adult-only stores (those stores that provide service to people ages 21 and over), and require new, stricter retailer requirements to further limit under-age 21 access to tobacco retailers;
2. Direct Staff to discuss the exemption provision for adult-only stores with Santa Clara County officials. The exemption has been proposed by Palo Alto staff to avoid severe economic impacts to five small businesses. The goals of the discussion with the County would be to modify the tobacco sales agreement to accommodate the exemption, and to maximize the use of County resources for the Permitting and Enforcement program for regulating Tobacco Retail Sales; and
3. Review staff responses to Council's December 9, 2019 meeting questions about how to further reduce youth access to tobacco and vaping products.

### **Executive Summary**

At the December 9, 2019 City Council Meeting, Council directed Staff to return with a revised Tobacco Retail Permit Ordinance that mirrors the latest revisions to the County Ordinance for the unincorporated areas of the County, with as few exemptions as possible. In researching the

potential impacts of this Ordinance to Palo Alto businesses, staff learned that adopting the County Ordinance in its entirety would result in the likely closure of five of the seven adult-only stores in Palo Alto (there are also 15 non-adult tobacco retailers in Palo Alto, but these stores would not see a significant impact to their business).

To address this potential major impact to the five small businesses, staff has included an exemption provision in the proposed Ordinance. This provision is not currently supported by the County and could result in the City having to run its own cost-recovery permit program for the 22 stores in Palo Alto that sell tobacco. If Council approves the staff recommendation, staff will engage the County in an effort to avoid or minimize the impact of this outcome.

### **Background**

The December 9, 2019, Council Colleagues' Memo discussed community and Councilmember concerns about the rise in youth vaping. As recently reported within the California Student Tobacco Survey, e-cigarette use has continued to increase, particularly among young people. In Santa Clara County, a third of all high school students have tried an e-cigarette and one in eight currently uses them. In addition, e-cigarette use is now associated with a wave of dangerous, life-threatening illnesses. As of October 22, 2019, 1,604 cases of lung injury associated with the use of e-cigarette or vaping products had been reported to the Centers for Disease Control and Prevention (CDC), and there had been 34 confirmed deaths due to e-cigarette or vaping associated lung injury.

On December 9, 2019, Council directed staff to return to Council with:

1. An ordinance prohibiting the sale and distribution of all electronic cigarettes and flavored tobacco products, in alignment with the County of Santa Clara's recent approach, with as few exemptions as possible;
2. Avenues identified to support legislation making it harder for minors to successfully order electronic cigarette products online (e.g. needing a signature of a 21-year-old at delivery);
3. A yearly update on the enforcement activities of the existing Tobacco Retail Permit Ordinance;
4. Suggested funding as needed after a Community Meeting in January 2109;
5. Investigative results of disincentives and/or fines for vaping in public;
6. Work done with Palo Alto Unified School District (PAUSD) through the City/School Liaison Committee to reduce youth vaping; and
7. Recommendation of appropriate disposal methods and education for electronic cigarettes.

## Discussion

The following information provides an update and information for action items identified at the December 9, 2109 Council Meeting.

### 1. Revisions to Municipal Code Chapter 4.64 Tobacco Retail Permit Ordinance

Per Council direction, this staff report includes proposed revisions to Palo Alto's TRP Ordinance (Attachment A). These revisions mirror the recently revised Santa Clara County Department of Environmental Health Ordinance which now prohibits the sale of flavored tobacco products and electronic cigarette devices, but includes an exemption from these new prohibitions for adult-only stores to avoid the permanent store closure that would likely occur for five adult-only tobacco retailers that would be most impacted by the revised TRP. The effective date is July 1, 2020.

The current Palo Alto TRP Ordinance adopted in 2018 includes the following:

- a. Prohibits pharmacies and vending machine sales of tobacco products;
- b. Restricts new retailers from receiving a TRP if they are located within 500 feet of another tobacco retailer or within 1,000 feet of a school;
- c. Prohibits the sale of flavored tobacco products except at "adult-only stores" (stores that prohibit anyone under the age of 21 from entering unless they are with an adult);
- d. Limits storefront advertising of tobacco products;
- e. Has a 24-month violation look back period, which is the span of time over which any additional violations are considered to be repeat violations.

The City Council approved a City-County agreement in 2016 ([staff report](#)) that stipulates that the Santa Clara County Department of Environmental Health will administer the TRP process for Palo Alto retailers, and that the City of Palo Alto Police Department (PAPD) will provide annual youth decoy (undercover) checks at tobacco retailers to confirm that no sales to people under age 21 are conducted. This agreement helps ensure compliance with all federal, state, and local laws and uniform standards for tobacco and electronic cigarette product sales, and more frequent permitting inspections than are provided by state and federal regulators.

Adopting the identical Santa Clara County Department of Environmental Health TRP revisions approved by the County on November 19, 2019 would add further restrictions which would:

- a. Prohibit the sale and distribution of electronic cigarette products at all retailers. E-cigarette products include e-cigarettes, e-cigars, e-pipes, vape pens, e-hookahs, and any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system;
- b. Prohibit the sale of all flavored tobacco products at all retailers;
- c. Revise the "look-back" violation period from 24 months to 60 months. The look-back period is the span of time over which additional violations are considered to be repeat violations.

Staff has developed the recommended Ordinance, in place of adopting the County's November 2019 Ordinance revision in its entirety, given the County Ordinance's potential impact on five small businesses. This is based on feedback from store owners of Mac's Smoke Shop, Raw Smoke Shop, Red Brick Café & Hookah Nites Lounge, Smoke and More, and Smokes and Vapes. According to these stores, 60 percent or more of their revenue is from sales of flavored tobacco and/or electronic cigarette products to people over age 21. This level of impact to retailers has not been seen in the unincorporated areas of the County where the County Ordinance is in effect (only one store has been impacted in a significant way), nor in the Town of Los Gatos, which also maintains a TRP partnership with the County (no Los Gatos stores were impacted by the Ordinance adoption, which was largely adopted as a preventative measure).

To address this major impact to the five small businesses, staff recommends that Council 1) Adopt amendments to the Tobacco Retail Permit (TRP) Ordinance (Municipal Code Chapter 4.64) (Attachment A), with an exemption for adult-only stores; and 2) Direct Staff to discuss the exemption provision with Santa Clara County officials. The goal of the discussion with the County is to modify the current tobacco retailer permit agreement with the County accordingly, and to maximize the use of County resources for the permitting and enforcement program for regulating tobacco retail sales. The exemption for adult-only stores would include three new retailer requirements to further limit underage sales of tobacco products or electronic cigarette products:

- a. People under age 21 could not enter an adult-only tobacco retailer, even if accompanied by an adult;
- b. Store staff at adult-only tobacco retailers must be located close enough to the store entrance to check identification before any member of the public enters;
- c. If any retailer is caught selling tobacco to a minor under 21 twice within 24 months, the permit for that retailer would be terminated, and the retailer would be suspended from applying for a new permit for one year. Reinstating a permit would be considered a "new" permit (not a renewal) and therefore the retailer would lose any grandfathered exemptions allowed under the Ordinance (e.g., school proximity, selling electronic cigarette products or flavored tobacco).

This recommendation, combined with new legislation and regulations that have gone into effect since the December 9, 2019 meeting (discussed in Section 2 of this report), would provide a significant reduction in teen access to vaping, and would allow the existing over age-21 stores to remain open for those over age-21 customers that choose to smoke or vape. All of these stores have complied with the requirement for no underage-21 sales of tobacco products during recent undercover youth decoy checks (discussed in Section 3 below). A comparison of Ordinance options is summarized in Attachment B—Comparison of Current Palo Alto Tobacco Retail Ordinance, Santa Clara County Ordinance, and Proposed Palo Alto Ordinance.

If the County opts to not revise the TRP agreement with the City, staff would assume the enforcement responsibilities for the 22 tobacco retailers. Administrative fees assessed to Palo Alto tobacco retailers for enforcement services would be considered (likely similar to those currently assessed by the County).

## **2. Legislation that will make it more difficult for minors to order electronic cigarette products online:**

As of January 1, 2020, a new law (via SB 39, Hill<sup>1</sup>) requires online tobacco sellers or distributors to place tobacco products in a conspicuously marked container and obtain the signature of a person 21 years of age or older before delivering the tobacco product. SB39 requires:

- a. Online retailers to verify that the purchaser or recipient of the product is 21 years of age or older by matching the name, address, and date of birth provided by the customer to information contained in a database of individuals whose age has been verified to be 21;
- b. If the seller cannot verify that the purchasing or recipient is 21 year or older, a valid government identification will need to be provided verifying that the billing address is the same on the check or credit card;
- c. The words “tobacco product” may be printed in the purchaser’s credit card statement so that potentially a parent would be flagged about the purchase;

Additionally, a new United States Food and Drug Administration regulation became effective February 6, 2020 which prohibits all retailers from selling flavored cartridge-based e-cigarette products. However, this regulation exempts menthol and tobacco-flavored e-liquids, tank-based systems, and single-use electronic cigarettes).<sup>2</sup>

The City has also supported several State bills that could help reduce youth access to tobacco products. Letters are listed publicly at :

[www.cityofpaloalto.org/gov/city\\_information/intergovernmental\\_affairs.asp](http://www.cityofpaloalto.org/gov/city_information/intergovernmental_affairs.asp).

Current legislation under consideration includes:

- a. SB 793 (Hill) as currently drafted would prohibit the sale of flavored tobacco products and electronic cigarette products<sup>3</sup> state-wide at all retailers;
- b. SB 424 (Jackson)—would ban the sale of single-use tobacco products, including single-use filters, single-use plastic devices needed for manipulation of tobacco products, and single-use electronic cigarettes<sup>4</sup>. This bill would allow the sale of multi-use tobacco

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<sup>1</sup>Senate Bill No. 39 *California Legislative Information*, [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB39](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB39). Accessed April 2, 2020

<sup>2</sup> [McGinley, L. \(2020, February 5\) Flavored e-cigarette pod ban starts Thursday: What it means for vapers, kids and parents. Retrieved from https://www.washingtonpost.com/health/2020/02/05/flavored-e-cigarette-pod-ban-starts-thursday-what-it-means-vapers/.](https://www.washingtonpost.com/health/2020/02/05/flavored-e-cigarette-pod-ban-starts-thursday-what-it-means-vapers/)

<sup>3</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB793](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB793). Accessed April 3, 2020.

<sup>4</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB424](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB424), Accessed April 3, 2020.

products, so long as those products are recyclable, or are collected for take-back by manufacturers of the product. This bill also targets the litter and hazardous waste associated with e-cigarette products. This bill is a carryover from 2019.

Both of these bills are on hold because of an imposed COVID-19 California legislature recess, but activity may resume in May 2020. If the above bills were to become law, they would collectively further reduce youth access to vaping throughout the state by decreasing access to both flavored traditional tobacco products, and also single-use electronic cigarettes and vaping products.

### **3. Enforcement Summary of the Tobacco Retail Permit Ordinance.**

Currently, the Santa Clara County Department of Health regulates the Palo Alto tobacco retailers. This function includes in-store visits to ensure that businesses comply with TRP requirements. In addition, the PAPD is required to confirm that stores only sell tobacco products to people ages 21 or older.

There are currently 22 tobacco retailers in Palo Alto: 15 retailers (mostly gas stations and liquor stores) and seven adult-only (over age-21) stores which include: Raw Smoke Shop, Red Brick Café & Hookah Nites Lounge, Smoke and More, Smokes and Vapes, Mac's Smoke Shop, Hemingway, and La Bodeguita del Medio.

#### ***Santa Clara County Department of Health Permit Compliance Checks and Retailer Density***

The Santa Clara County Department of Environmental Health conducted the first TRP inspections to each retailer in March 2019. There was a high degree of compliance at Palo Alto retailers with most of the multiple Ordinance requirements (e.g., maintaining a permit, compliance with flavored tobacco restrictions, signage, licenses posted, and other requirements). Follow-up letters and visits were conducted to businesses that were out of compliance with any of the Ordinance provisions and particularly to ensure that stores not exempted from the flavored tobacco restriction continued to cease sales of those products.

Since implementing the TRP there has been a decrease of seven tobacco retailers in total. In 2017, there were 29 tobacco retailers in the City whereas now there are 22 retailers. This is because:

- four businesses were restricted from selling tobacco products because they had a licensed pharmacist on-site (three Walgreens stores and one Safeway);
- three businesses did not apply for the TRP and are no longer engaging in the sale of tobacco products (Antonio's Nut House, Palo Alto Hills Golf and Country Club, and Driftwood Deli and Market);
- one location is no longer in business (Cigar House);
- one adult-only store went into business (Raw Smoke Shop);
- two attempts were made to apply for a permit, but due to the density restriction, only one store— Raw Smoke Shop— was eligible to receive a permit.

In regard to the number of over age-21 stores, there were six over age-21 stores when the TRP Ordinance was adopted in 2017. There are now seven over age-21 retailers because, as discussed above, Raw Smoke Shop opened before the first Tobacco Retail Permit Ordinance went into effect on July 1, 2018.

#### ***Palo Alto Police Department Undercover Investigations***

In January 2020, the PAPD completed the annual undercover investigations which are a requirement of the TRP. A Police Department staffing shortage in 2019 prohibited the undercover investigations from occurring that year.

The Police Department's undercover investigations showed that at 85% of retailers that were visited (17 of 20; two retailers were not visited for reasons outlined below), clerks properly checked the identification of the undercover Police Department representative. Upon learning that she was under the age of 21, they refused to sell tobacco products to her. Police had given the undercover representative instructions to present her actual identification if asked, and to respond with her truthful age if asked. Police issued citations to clerks from the three retailers who did not properly check her identification and sold tobacco products to her. As these three criminal cases move through the court process, the Palo Alto Police Department is working with the Santa Clara County Department of Environmental Health to take administrative action against the retailers themselves. Administrative sanctions could include fines and a permit suspension for up to 30 days for the first offense.

The Police Department did not visit two retailers during the undercover investigations due to an inability to safely monitor the undercover representative, solely as a result of the physical layout of the establishments. However, since both retailers deal primarily with cigars (a tobacco product not as sought after by young adults as vaping products or cigarettes), the Police Department felt that the need to safely monitor the undercover representative outweighed the need to conduct the compliance check. The Police Department will explore alternate means to conduct compliance checks at these two retailers in the future.

#### **4. Community Funding Needed to Reduce Vaping**

A forum focused on youth vaping was planned by a committee of the Healthy City Healthy Community workgroup. Palo Alto Medical Foundation funded and hosted the event. The event was held on January 23, 2020 with the goal of bringing community leaders and experts together to share information, facilitate discussion on best practices, and identify gaps and opportunities in local and regional efforts. A keynote was delivered by April Roeseler, Chief of the California Tobacco Control Program of the California Department of Public Health. The forum was attended by approximately 65 people representing youth, parents, public and private schools, youth-serving organizations, faith-based organizations, health care, law enforcement, local and regional government, and the media.

The Healthy City Healthy Community committee asked attendees to complete a post-event survey and asked the question, “If funding were available, where would you prioritize use of funds with respect to youth vaping?” Of the responses, education and prevention in schools was ranked the highest followed by (in order of highest to lowest): treatment for youth addicted to nicotine; connection of anxiety and mental health to vaping; education of middle school students; local data collection on youth vaping; and understanding and elimination of vape waste in the environment.

The Healthy City Healthy Community group conducted an initial review of the survey results at its March 4, 2020 meeting and agreed that increased youth education and prevention beginning at the middle school level or younger, could have the greatest impact. Additionally, the group discussed that peer-to-peer education may have greater success and so suggested that increased funding to the ThinkFund (formerly Bryant Street Garage Fund) to fund youth-led initiatives would be the best use of resources.

#### **5. Additional Disincentives to Reduce Vaping in Public**

Palo Alto Municipal Code Chapter 9.14, Smoking and Tobacco Regulations, already prohibits smoking and e-cigarette use (includes vaping) in public spaces and multi-family dwellings, e.g., all parks, open spaces and Palo Alto facilities; outdoor and indoor commercial dining areas, entryways, public events, recreation areas, service areas, commercial indoor areas, outdoor service areas (bus stops, ATMs, and ticket lines), employment places, construction worksites, the Downtown Business District, and 25 feet from any door (or window) to any enclosed area. Exceptions to this ordinance are allowed if a designated smoking area is established by a shopping/commercial/multi-family property area that is at least 25 feet away from any windows or doors to enclosed areas and that provides receptacles to control litter. Fines range from \$250 to \$500 for repeat violations in public areas. Currently, PAPD is not resourced to cite smoking in multi-family dwellings, but the ordinance allows landlords to find tenants in material breach of their lease for smoking anywhere on the property except in designated areas and gives other tenants the right to enforce. Public signs are already posted in most of these areas that are owned by the City of Palo Alto and specify that both smoking and e-cigarette/vaping use are prohibited.

In addition:

- a. Free no-smoking signs are available to multi-family units upon request (see [cityofpaloalto.org/smoking](http://cityofpaloalto.org/smoking) for signage options);
- b. The City and Santa Clara County Department of Environmental Health are currently working together to supply businesses with new “No Smoking, No e-cigarette/vaping” signs that will be available to businesses upon request. Staff will provide outreach about sign availability.

It is important to note that as of 2016, the California legislature decriminalized the purchase or possession of any tobacco products or paraphernalia (this includes e-cigarettes or vaping

devices) by minors under the age of 18. The law now also prohibits businesses from selling tobacco products or paraphernalia to anyone under the age of 21, or under the age of 18 for active military personnel with valid identification (Palo Alto's TRP prohibits sales to anyone under the age of 21 regardless of military service standing). Since the law change now places the focus on the retailer rather than the minor, the police are no longer able to cite minors for possessing tobacco or smoking devices.

For youth in possession of tobacco or smoking devices on a school campus, PAPD's standard approach is to allow these incidents to be handled administratively as a school matter. PAPD's School Resource Officers (SROs) report that during the 2018-19 and 2019-2020 academic years, they only encountered approximately 15 devices in possession of students. Approximately 75% of those were from students at the high schools, while the rest came from students at the middle schools. The SROs report that school administration officials usually confiscate the device and may not choose to notify police since it is handled administratively and there are no longer any criminal ramifications to the student due to the 2016 change in state law as described above. If the SROs do confiscate the device, it is either given to the parents or used as a teaching aid in educational programs.

The SROs report that in speaking with students, students are most often buying vaping devices and supplies online with their parents' credit cards, and do not buy them at Palo Alto retailers. This may be more difficult now with the passage of SB39 which became effective January 1, 2020, as discussed previously in this report.

#### **6. Palo Alto Unified School District (PAUSD) and City/School Liaison Committee effort to Reduce Youth Vaping**

The City/School Liaison Committee meets once monthly. The committee consists of two PAUSD Board members and two Palo Alto City Council members. The committee discusses issues of mutual interest between the two organizations. As part of the effort to reduce youth vaping, the committee is available to hear updates related to the other initiatives mentioned in this report and participate in other efforts related to this topic. The committee reports their discussions back to the PAUSD Board and Palo Alto City Council.

#### **7. Appropriate Disposal Methods and Education for Electronic Cigarettes**

Hazardous waste from e-cigarette and vaping products includes nickel cadmium batteries, lithium batteries, and electronic components. Nicotine itself, found in both e-liquids and traditional tobacco products, is also an acutely hazardous product.

These products' designation as hazardous wastes cause real-world problems when they are not properly managed at end-of-life: "filters" of traditional cigarettes are plastic and create one of the most prevalent sources of litter and water pollution in local creeks; lithium batteries used in many e-cigarette products are documented to have caused explosions during use and during disposal at waste management facilities, and clean-up costs required by state and local public agencies are becoming increasingly documented. The California

Department of Transportation, for example, estimates that it costs \$41 million annually to clean up cigarettes on roadways. (*California Product Stewardship Council, [calpsc.org/products](http://calpsc.org/products), January 31, 2020*). Ultimately, an industry-funded product-design and disposal model (also known as “Extended Producer Responsibility”) is needed to relieve the burden of public agencies funding the cleanup and disposal of tobacco and e-cigarette products. This is one goal of SB 424, discussed previously in this report.

However, until an industry-funded product design and disposal model is established, the City will accept e-cigarettes, vaping products, and tobacco products at weekly Household Hazardous Waste events and plans to provide outreach about this service in 2020.

### **Timeline**

Should Council adopt the proposed revisions to the Tobacco Retail Ordinance, the Ordinance would become effective July 1, 2020, which aligns with the County’s Ordinance effective start date.

### **Resource Impact**

If County of Santa Clara continues its enforcement oversight for Palo Alto tobacco retailers, there will be no significant resource impact to the City beyond the staff time already committed to develop and mail outreach materials for businesses, visit tobacco retailers, and update the current TRP with the new stricter standards. Should the County be unwilling to revise the TRP agreement with the City, staff would assume the enforcement responsibilities for the 22 tobacco retailers. Staff anticipates this would require a relatively minor use of staff time, with costs ultimately recoverable through administrative fees.

### **Policy Implications**

This action is consistent with existing City policies.

### **Stakeholder Engagement**

Businesses were sent a letter on February 19, 2020 outlining potential ordinance changes (Attachment C–Business Outreach for Proposed 2020 TRP Update). The letter included a list of Frequently Asked Questions and a summary of each of Palo Alto’s two smoking ordinance requirements. A duplicate packet of information was hand-delivered to each business on February 26 so that retailers could ask questions, and staff could ensure delivery of the letter and supporting information. Businesses who received notices about proposed Ordinance changes were:

1. Hemingway, 480 University Avenue, Palo Alto (over age-21 store)
2. Mac's Smoke Shop, 534 Emerson Street (over age-21 store)
3. Raw Smoke Shop, 265 California Avenue (over age-21 store)
4. Red Brick Café & Hooka Nites Lounge, 235 University Ave (over age-21 store)
5. Smoke & More, 3896 El Camino Real (over age-21 store)
6. Smokes & Vapes, 3491 El Camino Real (over age-21 store)

7. La Bodeguita del Medio, 463 S California Avenue (maintains an over age-21 smoking lounge)
8. 7-Eleven 2366-18584E, 401 Waverley Street
9. 7-Eleven, 708 Colorado Avenue
10. B&P Florist & Plants, 3880 El Camino Real
11. Barron Park Shell, 3601 El Camino Real
12. Embarcadero Shell, 1161 Embarcadero Rd
13. Ermies Liquor, 3870 El Camino Real
14. Jim Davis Valero, 3972 El Camino Real
15. Palo Alto Arco, 699 San Antonio Road
16. Palo Alto Chevron, 3897 El Camino Real
17. Palo Alto Fine Wine and Spirits, 3163 Middlefield Rd
18. Palo Alto Shell, 2200 El Camino Real
19. Palo Alto Unocal, 835 San Antonio Road
20. Smog Pros Arco, 840 San Antonio Road
21. Valero Corner Store, 705 San Antonio Road
22. Valero of Palo Alto, 1963 El Camino Real

The initial outreach fully mirrored the County of Santa Clara approach, including prohibiting the sale and distribution of all electronic cigarettes and flavored tobacco products at adult-only retailers. It did not include the exemption for adult-only retailers or the proposed three new requirements to further limit underage sales of tobacco products or electronic cigarette products at those retailers. Staff will notify the adult-only retailers of these changes to the proposed Ordinance in advance of Council's consideration of the Ordinance. Following Council's approval of the Ordinance, additional outreach will be conducted via residential and commercial utility bill inserts, a press release, and social media channels.

### **Environmental Review**

This proposed Ordinance would not be subject to environmental review under the California Environmental Quality Act (CEQA) because it does not cause a direct physical change in the environment or a reasonably foreseeable indirect change in the physical environment.

### **Attachments:**

- Attachment A - Ordinance Amending Chapter 4.64 (Permits for Retailers of Tobacco Products)
- Attachment B- Summary of TRP Requirements and Alternatives 4 22 20a
- Attachment C - Business Outreach for Proposed 2020 TRP Update

Not Yet Approved

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Chapter 4.64  
("Permits for Retailers of Tobacco Products") Of Title 4 (Business Licenses and  
Regulations).

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

- A. 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.<sup>1</sup> These products can resemble traditional tobacco cigarettes (cig-a-likes), cigars, or pipes, or even everyday items like pens or USB memory sticks.<sup>2</sup> The pervasive use of these and other related Electronic Cigarette Products has given rise to a massive and multi-faceted public health crisis.
- B. The Surgeon General has declared the use of e-cigarettes among youth an "epidemic." There is an extensive and rapidly growing body of evidence supporting that characterization. For instance:
  - i. E-cigarette companies use marketing strategies to target youth. In 2014, 18 million (7 out of 10) middle and high school students were exposed to e-cigarette ads.<sup>3</sup>
  - ii. E-cigarettes are marketed in a variety of flavors that appeal to youth, including gummy bear, birthday cake, cotton candy, and fruit punch.
  - iii. While youth use of combustible cigarettes has decreased dramatically, e-cigarette use—or "vaping"—among middle and high school students increased

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<sup>1</sup> Centers for Disease Control and Prevention. Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General (2016). [https://www.cdc.gov/tobacco/data\\_statistics/sgr/e-cigarettes/index.htm](https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/index.htm).

<sup>2</sup> National Institute on Drug Abuse. Electronic Cigarettes (E-cigarettes) (2019). <https://www.drugabuse.gov/publications/drugfacts/electronic-cigarettes-e-cigarettes>; Breland A, Soule E, Lopez A, Ramôa C, El-Hellani A, Eissenberg T. Electronic cigarettes: what are they and what do they do? *Ann N Y Acad Sci*. 2017;1394(1):5-30. doi:10.1111/nyas.12977.

<sup>3</sup> Centers for Disease Control and Prevention. E-cigarette Ads and Youth (2017). <https://www.cdc.gov/vitalsigns/ecigarette-ads/index.html>.

by 78 percent between 2017 and 2018, with over 4 million kids currently using e-cigarettes in 2018.<sup>4</sup>

- iv. The proportion of current e-cigarette users in high school who reported use on 20 days or more in the past 30-day period increased from 20 percent in 2017 to 27.7 percent in 2018.<sup>5</sup>
  - v. In 2019, the national prevalence of e-cigarette use during the previous 30 days was more than 1 in 4 students in the 12th grade, more than 1 in 5 in the 10th grade, and more than 1 in 11 in the 8th grade.<sup>6</sup>
  - vi. Use of e-cigarettes among undergraduate college students increased from 4.9 percent to 10.1 percent between 2017 and 2018.<sup>7</sup>
  - vii. There was a 46.2 percent increase in current e-cigarette use between 2017 and 2018 among young adults.<sup>8</sup>
  - viii. Adolescents obtain e-cigarettes from a variety of sources. The most common sources are: purchasing from a store or online (31.1 percent); buying from another person (16.3 percent); and giving someone money to purchase for them (15.0 percent).<sup>9</sup>
- C. Nearly 1 in 3 Santa Clara County teens—31.6 percent—report that they have used an e-cigarette at least once. Most teens obtained their e-cigarettes from “social sources,”

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<sup>4</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011–2018. *MMWR Morb Mortal Wkly Rep.* 2018;67(45):1276-1277. doi:10.15585/mmwr.mm6745a5.

<sup>5</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011–2018. *MMWR Morb Mortal Wkly Rep.* 2018;67(45):1276-1277. doi:10.15585/mmwr.mm6745a5.

<sup>6</sup> Miech R, Johnston L, O’Malley PM, Bachman JG, Patrick ME. Trends in Adolescent Vaping, 2017–2019. *N Engl J Med.* September 2019:NEJMc1910739. doi:10.1056/NEJMc1910739.

<sup>7</sup> *Compare American College Health Association-National College Health Assessment II: Undergraduate Student Reference Group Executive Summary Spring 2018.* Silver Spring, MD: American College Health Association with American College Health Association-National College Health Assessment II: Reference Group Undergraduate Executive Summary Spring 2017. Hanover, MD: American College Health Association.

<sup>8</sup> Dai H, Leventhal AM. Prevalence of e-Cigarette Use Among Adults in the United States, 2014-2018. *JAMA.* September 2019. doi:10.1001/jama.2019.15331.

<sup>9</sup> Pepper JK, Coats EM, Nonnemaker JM, Loomis BR. How Do Adolescents Get Their E-Cigarettes and Other Electronic Vaping Devices? *Am J Health Promot.* 2019;33(3):420-429. doi:10.1177/0890117118790366.

while around 45 percent reported purchasing their own e-cigarettes (with over a quarter of this group saying they buy them directly from a local store).<sup>10</sup>

- D. E-cigarettes have severe adverse health effects for both youth and adults.
- i. According to the Surgeon General, “[m]ost e-cigarettes contain nicotine—the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during adolescence can harm the developing brain—which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.”<sup>11</sup>
  - ii. E-cigarette use can also play a role in adolescent social maladjustment, including poor learning and academic performance, increased aggressive and impulsive behavior, poor sleep quality, attention deficits, impaired memory, cognition, and increased depression and suicidal ideation.<sup>12</sup>
  - iii. Daily e-cigarette use is associated with increased risk of irreversible cardiovascular and lung disease through the inhalation of harmful chemicals.<sup>13</sup>
  - iv. Secondhand emissions from e-cigarettes are also dangerous because they contain “nicotine; ultrafine particles; flavorings such as diacetyl, a chemical linked to serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead.”<sup>14</sup>

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<sup>10</sup> Zhu S-H, Lee J, Zhuang YL, Branden K, Cole A, Wolfson T, Gamst A (2019). Tobacco use among high school students in Santa Clara County: Findings from the 2017-18 California Student Tobacco Survey. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California, San Diego.

<sup>11</sup> Surgeon General’s Advisory on E-cigarette Use Among Youth (2008). <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>12</sup> Tobore TO. On the potential harmful effects of E-Cigarettes (EC) on the developing brain: The relationship between vaping-induced oxidative stress and adolescent/young adults social maladjustment. *J Adolesc.* 2019; 76:202-209. doi:10.1016/j.adolescence.2019.09.004.

<sup>13</sup> American Lung Association. The Impact of E-Cigarettes on the Lung (2011). <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>; Bein K, Leikauf GD. Acrolein - a pulmonary hazard. *Mol Nutr Food Res* 55(9):1342-60. doi: 10.1002/mnfr.201100279.

<sup>14</sup> American Lung Association. The Impact of E-Cigarettes on the Lung (2011). <https://www.lung.org/stop-smoking/smoking-facts/impact-of-e-cigarettes-on-lung.html>.

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- v. E-cigarette use is dangerous for pregnant women and is a fetal risk factor. It is associated with an increased risk of smallness-for-gestational-age.<sup>15</sup>
- E. In addition to these negative long-term health effects, e-cigarette use is now associated with a wave of dangerous, life-threatening illnesses.
  - i. As of October 15, 2019, 1,479 cases of acute lung injury associated with the use of e-cigarette or vaping products in 49 states, the District of Columbia, and 1 U.S. territory have been reported to the Centers for Disease Control and Prevention (CDC). Thirty-three deaths have been confirmed in 24 states.<sup>16</sup>
  - ii. Since the CDC's August 30, 2019 Official Health Advisory,<sup>17</sup> there have been two reported cases of lung injury associated with e-cigarettes in Santa Clara County. One of these cases was in an adolescent, and both individuals required hospitalization.
- F. Other risks and injuries are attributable to the proliferation of e-cigarettes:
  - i. E-cigarettes present a poison risk for children. From 2013 to 2017, an estimated 4,745 e-liquid poisoning cases among children under age five were treated in U.S. hospital emergency departments.<sup>18</sup>
  - ii. E-cigarettes present a risk of burns and other injuries, usually from malfunctioning batteries. From 2015 to 2017, there were an estimated 2,035 e-cigarette explosion and burn injuries reported in U.S. hospital emergency rooms.<sup>19</sup>

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<sup>15</sup> Cardenas V, Cen R, Clemens M, et al. Use of Electronic Nicotine Delivery Systems (ENDS) by pregnant women I: Risk of small-for-gestational-age birth. *Tob Induc Dis*. 2019;17(May). doi:10.18332/tid/106089

<sup>16</sup> Centers for Disease Control and Prevention. Outbreak of Lung Injury Associated with E-cigarette Use, or Vaping. October (2019). [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html).

<sup>17</sup> Centers for Disease Control and Prevention Official Health Advisory. Severe Pulmonary Disease Associated with Using E-Cigarette Products (Aug. 30, 2019). <https://emergency.cdc.gov/han/han00421.asp>.

<sup>18</sup> Chang JT, Wang B, Chang CM, Ambrose BK. National estimates of poisoning events related to liquid nicotine in young children treated in US hospital emergency departments, 2013–2017. *Inj Epidemiol*. 2019;6(1):10. doi:10.1186/s40621-019-0188-9.

<sup>19</sup> Rossheim ME, Livingston MD, Soule EK, Zeraye HA, Thombs DL. Electronic cigarette explosion and burn injuries, US Emergency Departments 2015-2017. *Tob Control*. 2019;28(4):472-474. doi:10.1136/tobaccocontrol-2018-054518.

- G. While the e-cigarette industry claims that its products help people quit smoking combustible cigarettes, the evidence shows that e-cigarette use is actually associated with *increased* risk of cigarette initiation, particularly among low-risk youths.<sup>20</sup>
- i. Use of e-cigarettes was most common among smokers, and dual users had the highest prevalence of respiratory symptoms. On a population level, this indicates that the present use of e-cigarettes does not adequately serve as a smoking cessation tool.<sup>21</sup>
  - ii. E-cigarettes are not commonly used as a quit tool among college students, but rather as a secondary source of nicotine, most commonly in current smokers.<sup>22</sup>
  - iii. Of adults and young adults over 18 who use e-cigarettes, around 63 percent typically use non-tobacco flavored e-cigarettes, while over a third typically use tobacco-flavored or unflavored e-cigarettes.<sup>23</sup>
- H. Open e-cigarette systems are customizable by consumers and often allow for potential “unorthodox” use of the product. These modifications include altering mechanical components and replacing liquid cartridges with dangerous off-market or illegal substances.<sup>24</sup> Customization is one of the most popular social media topics for e-cigarettes.<sup>25</sup>

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<sup>20</sup> Berry KM, Fetterman JL, Benjamin EJ, et al. Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths. *JAMA Netw Open*. Published online February 01, 2019;2(2):e187794. doi:10.1001/jamanetworkopen.2018.7794.

<sup>21</sup> Hedman L, Backman H, Stridsman C, et al. Association of Electronic Cigarette Use With Smoking Habits, Demographic Factors, and Respiratory Symptoms. *JAMA Netw Open*. 2018;1(3):e180789. doi:10.1001/jamanetworkopen.2018.0789.

<sup>22</sup> Martinasek MP, Bowersock A, Wheldon CW. Patterns, Perception and Behavior of Electronic Nicotine Delivery Systems Use and Multiple Product Use Among Young Adults. *Respir Care*. 2018;63(7):913-919. doi:10.4187/respcare.06001.

<sup>23</sup> Landry RL, Groom AL, Vu T-HT, et al. The role of flavors in vaping initiation and satisfaction among U.S. adults. *Addict Behav*. 2019;99:106077. doi:10.1016/j.addbeh.2019.106077.

<sup>24</sup> Guy MC, Helt J, Palafox S, et al. Orthodox and Unorthodox Uses of Electronic Cigarettes: A Surveillance of YouTube Video Content. *Nicotine Tob Res*. 2019;21(10):1378-1384. doi:10.1093/ntr/nty132.

<sup>25</sup> Lee A, Hart J, Sears C, Walker K, Siu A, Smith C. A picture is worth a thousand words: Electronic cigarette content on Instagram and Pinterest. *Tob Prev Cessat*. 2017;3(July). doi:10.18332/tpc/74709.

SECTION 2. Chapter 4.64 (Permits for Retailers of Tobacco Products) of Title 4 (Business Licenses and Regulations) is hereby amended and restated as follows:

**CHAPTER 4.64.  
PERMITS FOR RETAILERS OF TOBACCO PRODUCTS**

**4.64.010. Intent.**

This Chapter is adopted to:

- (1) Ensure compliance with the business standards and practices of the County;
- (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 to individuals 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 Chapter 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.

**4.64.020. Definitions.**

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

- (a) *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 Chapter is not an Arm's Length Transaction.
- (b) *Department* means any department of the City of Palo Alto or County of Santa Clara designated by the City Manager to enforce or administer this Chapter, including 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 Chapter.

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- (c) *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.
- (d) *Electronic Cigarette Products* 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.
- (e) *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.
- (f) *Permit* means a valid permit issued by the Department to a Person to act as a Retailer.
- (g) *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.
- (h) *School* means a public or private elementary, middle, junior high, or high school.
- (i) *Sale* and *Sold* includes any sale, exchange, barter or offer for sale.

- (j) *Tobacco Product* means (unless specifically noted elsewhere) 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.

**4.64.030. Requirements and prohibitions.**

- (a) *Permit required.* It shall be unlawful for any Person to act as a Retailer without first obtaining and maintaining a Permit pursuant to this Chapter for each location at which Retailing occurs.
- (b) *Lawful business operation.* It shall be a violation of this Chapter for any Retailer to violate any local, state, or federal law applicable to Tobacco Products or the Retailing of such Tobacco Products.
- (c) *Display of Permit.* Each Permit shall be prominently displayed in a publicly visible place at the location identified in the Permit.
- (d) *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 Public Health Department.
- (e) *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.
- (f) *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.
- (g) *False and misleading advertising prohibited.* A Retailer without a Permit:
  - (1) Shall keep all Tobacco Products out of public view.
  - (2) 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

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could lead a reasonable consumer to believe that Tobacco Products can be obtained at that location.

- (h) *Limitation on storefront advertising.* No more than 15 percent of the square footage of the windows and clear doors of a 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 (h) shall not apply to an establishment where there are no windows or clear doors, or where existing windows are located only at a height that precludes a view of the interior of the premises by an individual standing outside the premises.
- (i) *Flavored Tobacco Products.*
  - (1) Except as permitted in paragraph (3) of this subsection (i), 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 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 Tobacco Product, smoke, or vapor produced by the Tobacco Product.
  - (2) A Tobacco Product shall be subject to a rebuttable presumption that the product is prohibited by paragraph (1) 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.
  - (3) Except as provided in Paragraph (4) of this subsection (i), Paragraph (1) of this subsection (i) shall not apply to any Retailer that meets all 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;

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- (iii) Does not permit any individual under 21 years of age to be present or enter the premises at any time;
  - (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 individuals under 21 years of age are prohibited from entering the premises;
  - (vi) Posts a staff person adjacent to all public entrances to the premises and verifies an individual's age upon entering using the same standards as section 4.63.030(e) (Positive identification required). The staff person may be located inside or outside the entrance.
- (4) No Retailer that is issued a new Permit after June 30, 2020 shall Sell or Distribute flavored Tobacco Products under paragraph (3) of this subsection (i) after Permit issuance. No Retailer that receives a Permit renewal after June 30, 2020 shall Sell or Distribute flavored Tobacco Products under paragraph (3) of this subsection (i) after Permit renewal. Regardless of the date of Permit issuance or renewal, no Retailer shall Sell or Distribute flavored Tobacco Products after June 30, 2020.
- (i) This Paragraph (4) of subsection (i) shall not apply to any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance No. 5418) who the Department determines meets the criteria of section 4.63.030(i)(3) of Ordinance No. 5418 as of June 30, 2020, and provided that the Retailer obtains a permit prior to July 1, 2020 pursuant to sections 4.64.050 and 4.64.060, timely renews its permit pursuant to section 4.64.070(b), and has not had its permit terminated pursuant to section 4.64.130(g).
- (j) *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.
  - (k) *Prohibition on Sale or Distribution of Tobacco Products to individuals under 21.* No Retailer shall Sell or Distribute any Tobacco Product to any individual who is under 21 years of age.
  - (l) *Prohibition on Sale or Distribution of Electronic Cigarette Products.* No Retailer that is issued a new Permit after June 30, 2020 shall Sell or Distribute Electronic Cigarette

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Products after Permit issuance. No Retailer that receives a Permit renewal after June 30, 2020 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.

- (i) This subsection (l) shall not apply to any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance No. 5418) who the Department determines meets the criteria of section 4.63.030(i)(3) of Ordinance No. 5418 as of June 30, 2020, and provided that the Retailer obtains a permit prior to July 1, 2020 pursuant to sections 4.64.050 and 4.64.060, timely renews its permit pursuant to section 4.64.070(b), and has not had its permit terminated pursuant to section 4.64.130(g).

### **4.64.040. Eligibility requirements for a Permit.**

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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 Permit applicant's proposed business location; provided, however, that the prohibition contained in this subsection (d) shall not apply to the following:
  - (1) Any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance No. 5418) operating lawfully on June 30, 2018 provided that the Retailer obtains a permit prior to July 1, 2020 pursuant to sections 4.64.050 and 4.64.060, and timely renews its permit pursuant to section 4.64.070(b);
  - (2) Any Retailer of electronic smoking devices (as such term was defined in the predecessor Ordinance No. 5418) operating lawfully on June 30, 2018 provided that the Retailer obtains a permit prior to July 1, 2020 pursuant to sections 4.64.050 and 4.64.060, and timely renews its permit pursuant to section 4.64.070(b); however, any such Retailer is subject to the prohibition on the Sale and Distribution of Electronic Cigarette Products established in Section 4.64.030(l) unless exempt by 4.64.030(l)(i); and

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- (3) 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.
  
- (e) 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 perimeter of an existing Retailer's business location and any point along the perimeter of the Permit applicant's proposed business location; provided, however, that the prohibition contained in this subsection (e) shall not apply to:
  - (1) Any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance No. 5418) operating lawfully on June 30, 2018 provided that the Retailer obtains a permit prior to July 1, 2020 pursuant to sections 4.64.050 and 4.64.060, and timely renews its permit pursuant to section 4.64.070(b); and
  - (2) Any Retailer of electronic smoking devices (as such term was defined in the predecessor Ordinance No. 5418) operating lawfully on June 30, 2018 provided that the Retailer obtains a permit prior to July 1, 2020 pursuant to sections 4.64.050 and 4.64.060, and timely renews its permit pursuant to section 4.64.070(b); however, any such Retailer is subject to the Prohibition on the Sale and Distribution of Electronic Cigarette Products established in Section 4.64.030(l) unless exempt by 4.64.030(l)(i).
  
- (f) Any exemption granted to a Retailer pursuant to subsections (d) and (e) shall cease to apply upon the earlier of any of the following to occur:
  - (1) The Retailer fails to timely renew the Permit pursuant to Section 4.64.070(b) of this Chapter.
  - (2) A new Person obtains Ownership in the business.
  - (3) A Retailer's Permit is terminated pursuant to Section 4.64.130(g).

**4.64.050. Application procedure.**

- (a) 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 City that the Retailer has complied with all laws applicable to Retailing. A Permit issued contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Retailer shall be revoked pursuant to Section 4.64.060 of this Chapter.
  
- (b) All Permit applications shall be submitted on a form supplied by the Department.

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- (c) A permitted Retailer shall inform the Department in writing of any change in the information submitted on an application for a Permit within 14 calendar days of a change.
- (d) 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' exemptions.

**4.64.060. Permit issuance, denial, and revocation.**

- (a) Upon the receipt of a complete application for a Permit, the application fee, and the annual Permit fee, the Department shall issue a Permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:
  - (1) The information presented in the application is inaccurate or false.
  - (2) The application seeks authorization for Retailing at a location for which this Chapter prohibits issuance of a Permit.
  - (3) The application seeks authorization for Retailing by a Person to whom this Chapter prohibits issuance of a Permit.
  - (4) The application seeks authorization for Retailing that is prohibited pursuant to this Chapter (e.g., mobile vending, Electronic Cigarette Products) or that is unlawful pursuant to any other law.
- (b) A Permit shall be revoked if the Department 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 issued. Such a revocation shall be without prejudice to the filing of a new Permit application.

**4.64.070. Permit term, renewal, and expiration.**

- (a) *Term of Permit.* The term of a Permit is one year. A Permit is invalid upon expiration.
- (b) *Renewal of Permit.* The Department shall renew a Permit upon timely payment of the annual Permit fee provided that the Retailer is in compliance with this Chapter, as amended. The Department 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.

- (c) *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 Department shall issue a Permit pursuant to the requirements of Section 4.64.060 of this Chapter.

**4.64.080. Permits nontransferable.**

- (a) 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 Sections 4.64.030 or 4.64.040 of this Chapter shall cease to apply.
- (b) Notwithstanding any other provision of this Chapter, prior violations of this Chapter 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:
  - (1) 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
  - (2) The City is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.

**4.64.090. Permit conveys a limited, conditional privilege.**

Nothing in this Chapter 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 City identified on the face of the Permit. All Permits are issued subject to the City's right to amend this Chapter, and Retailers shall comply with all provisions of this Chapter, as amended.

**4.64.100. Fees.**

The Department shall not issue or renew a Permit prior to full payment of any applicable fees. The City shall, from time to time, establish by resolution or ordinance 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 Chapter, 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 Chapter. All fees and interest earned from such fees shall be used exclusively to fund administration and enforcement of this Chapter.

**4.64.110. Compliance monitoring.**

- (a) Compliance with this Chapter shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this Chapter. The City Manager may designate any number of additional individuals to monitor and facilitate compliance with this Chapter.
- (b) The Department or other individuals designated to enforce the provisions of this Chapter 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 City, the County of Santa Clara, or its agents.

**4.64.120. Prevention of underage Sales.**

- (a) The Department or other departments or individuals designated to enforce the provisions of this Chapter shall, in conjunction with the Police Department, check each Retailer at least once per 12-month period 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 City, the County of Santa Clara, or its agents.
- (b) The City shall not enforce any law establishing a minimum age for Tobacco Product purchases against an individual who otherwise might be in violation of such law because of the individual's age ("Youth Decoy") if the potential violation occurs when:
  - (1) The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City or County of Santa Clara;
  - (2) The Youth Decoy is acting as an agent of a Department or individual designated by the City or County of Santa Clara to monitor compliance with this Chapter; or
  - (3) The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the City, the County of Santa Clara, or the California Department of Public Health.

**4.64.130. Penalties for a violation by a Retailer with a Permit.**

- (a) *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 Department 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 Chapter, has pled

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guilty, “no contest” or its equivalent to such a violation, or has admitted to a such a violation.

- (b) *Amount of fine.* The amount of the administrative fine for each such violation shall be as follows:
- (1) A fine not to exceed \$100.00 for a first violation within a 12-month period;
  - (2) A fine not to exceed \$200.00 for a second violation within a 12-month period; and;
  - (3) A fine not to exceed \$500.00 for each additional violation within a 12-month period.
- (c) *Time period for Permit suspension.* The period of the suspension shall be as follows:
- (1) For a first violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to 30 calendar days.
  - (2) For a second violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to 90 calendar days.
  - (3) For each additional violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to one year.
- (d) *Waiver of penalties for first violation.* The Department may waive any penalties for a Retailer’s first violation of any requirement, condition, or prohibition of this Chapter, 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 Department’s waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
- (e) *Corrections period.* The Department shall have discretion to allow a Retailer a period of time to correct any violation of any requirement, condition, or prohibition of this Chapter, other than a violation of a law regulating youth access to Tobacco Products. If the Department exercises its discretion to provide a corrections period, and a Retailer’s violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.
- (f) *Written notice of penalties.* Whenever a fine is issued and/or a Permit is suspended based on a violation of this Chapter, the Department shall provide the Retailer written notice of the violation and the fine and suspension, including when the suspension shall take effect.

- (g) *Revocation for Retailers of flavored Tobacco Products or Electronic Cigarette Products.* In addition to any other penalty authorized by law, a Permit shall be revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence that any Retailer of flavored Tobacco Products and/or Electronic Cigarette Products, or any of the Retailer's agents or employees, has violated section 4.64.030(k) (*Prohibition on Sale or Distribution of Tobacco Products to individuals under 21*), has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to a such a violation, on two or more occasions within any 24-month period. The Department shall provide the Retailer written notice of the violations and revocation, including when the revocation shall take effect.

**4.64.140. Penalties for Retailing without a Permit.**

- (a) *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 Department 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.
- (b) *Amount of fine.* The amount of the administrative fine for each such violation shall be as follows:
- (1) A fine not to exceed \$100.00 for a first violation within a 12-month period;
  - (2) A fine not to exceed \$200.00 for a second violation within a 12-month period; and
  - (3) A fine not to exceed \$500.00 for each additional violation within a 12-month period.
- (c) *Time period for Permit ineligibility.* The ineligibility period shall be as follows:
- (1) 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.
  - (2) 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.

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- (3) 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.
- (d) *Waiver of penalties for first violation.* The Department 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 in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
- (e) *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.
- (f) *Appeals.* Any penalties imposed under this section may be appealed pursuant to Section 4.64.150 of this Chapter. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.

**4.64.150. Appeals.**

- (a) 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 Office of the County Hearing Officer (or City Clerk if violation is enforced by City) within 10 days from the date of the written notice of penalties.
- (b) The Retailer shall include the following in or with the hearing request form:
  - (1) A statement indicating the reason the Retailer contests the written notice of penalties;
  - (2) Any evidence the Retailer wants the Hearing Officer to consider;
  - (3) An advance deposit of the amount of any fine challenged; and
  - (4) The address of the Retailer and, if available, an email address that can be used for contact and correspondence by the Office of the County Hearing Officer (or City Clerk if violation is enforced by City) and the Department. The Retailer may request service of notice by mail.

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- (c) The hearing request form shall be deemed filed on the date received by the Office of the County Hearing Officer (or City Clerk if violation is enforced by City). A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.
- (d) After receiving a timely hearing request form, the Office of the County Hearing Officer (or City Clerk if violation is enforced by City) shall notify the Department as soon as practicable and then shall schedule an administrative hearing. The Office of the County Hearing Officer (or City Clerk if violation is enforced by City) shall provide the Retailer and the Department 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.
- (e) Between the time the Retailer requests the administrative hearing and the time of the Hearing Officer's decision, the Retailer, the Department, and each of their representatives shall not engage in *ex parte* communications with the Office of the County Hearing Officer (or City Clerk if violation is enforced by City) or the Hearing Officer regarding the matters at issue in the hearing.
- (f) 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.
- (g) At the hearing, the Retailer and the Department 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 Section 4.64.160(c).
- (h) The written notice of penalties and any other reports prepared by or for the Department 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.
- (i) The Hearing Officer may continue the hearing from time to time, in his or her sole discretion, to allow for its orderly completion. After receiving the evidence submitted at the hearing, the Hearing Officer may further continue the hearing and request additional information from either the Department or the Retailer.

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- (j) 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:
  - (1) Be based on a preponderance of the evidence.
  - (2) Include a statement of the reasons for the decision.
  - (3) Be issued within 20 calendar days of the close of the hearing.
  - (4) Be served on both the Retailer and the Department. The decision shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
- (k) Based on the Hearing Officer's decision, the Office of the County Hearing Officer (or City's Administrative Services Division if violation is enforced by City) shall promptly refund to the Retailer any amount of the advance fine deposit the Department is not entitled to and shall provide the remainder to the Department.
- (l) The Hearing Officer's written decision shall constitute the final administrative decision of the City.

**4.64.160. Enforcement.**

- (a) Any violation of this Chapter is hereby declared to be a public nuisance.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (c) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of an individual under the age of 21 years old, such an individual shall not be required over his or her objection to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (d) Violations of this Chapter may be remedied by a civil action brought by the City Attorney or Santa Clara County Counsel, 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 Chapter, each day on which a Tobacco Product is offered for Sale in violation of this Chapter, and each individual retail Tobacco Product that is Sold or Distributed in violation of this Chapter, shall constitute a separate violation of this Chapter.

- (e) Any Person found guilty of violating any provision of this Chapter shall be deemed guilty of an infraction, punishable as provided by California Government Code § 25132.
- (f) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

**4.64.170. 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 3. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. The Council finds that this project is exempt from the provisions of the California Environmental Quality Act (“CEQA”), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

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SECTION 5. This ordinance shall be effective on July 1, 2020.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Public Works

\_\_\_\_\_  
Chief of Police

\_\_\_\_\_  
Director of Administrative Services

**Attachment B-Comparison of Current Palo Alto Tobacco Retail Ordinance, Santa Clara County Ordinance, and Proposed Palo Alto Ordinance**

	<b>Current TRP Ordinance Requirements</b> <i>Adopted in 2018</i>	<b>Santa Clara County TRP Ordinance Changes</b> <i>Adopted by Santa Clara County in November 2019</i>	<b>Proposed Palo Alto TRP Ordinance Changes</b>
<b>Banned Products</b>	<ul style="list-style-type: none"> <li>Prohibits pharmacies and vending machine sales of tobacco products;</li> <li>Prohibits the sale of flavored tobacco products except at adult-only stores (stores that prohibit anyone under the age of 21 from entering unless they are with an adult).</li> </ul>	<ul style="list-style-type: none"> <li>Prohibits the sale and distribution of electronic cigarette products at all retailers including adult-only (over-21) retailers;</li> <li>Prohibits the sale of all flavored tobacco products at all retailers including adult-only stores.</li> </ul>	Same as current ordinance but would: <ul style="list-style-type: none"> <li>prohibit the sale of all Electronic Cigarette Products except at adult-only stores.</li> </ul>
<b>Administrative Requirements</b>	<ul style="list-style-type: none"> <li>Limits storefront advertising of tobacco products;</li> <li>New retailers may not locate within 500 feet of another tobacco retailer or within 1,000 feet of a school.</li> </ul>	<ul style="list-style-type: none"> <li>Limits storefront advertising of tobacco products;</li> <li>New retailers may not locate within 500 feet of another tobacco retailer or within 1,000 feet of a school.</li> </ul>	Same as current ordinance but would: <ul style="list-style-type: none"> <li>prohibit people under age 21 from entering an adult-only store even if accompanied by an adult;</li> <li>require store staff to be located close enough to the store entrance to check ID before any member of the public enters.</li> </ul>
<b>Enforcement</b>	<ul style="list-style-type: none"> <li>Periodic compliance checks by state and federal agencies;</li> <li>Permit checks conducted by Santa Clara County Department of Health;</li> <li>Undercover checks conducted by Palo Alto Police Department to enforce no under age -21 sales;</li> <li>Repeat violations are considered over 24-month time span.</li> </ul>	<ul style="list-style-type: none"> <li>Periodic compliance checks by state and federal agencies;</li> <li>Permit checks conducted by Santa Clara County Department of Health;</li> <li>Undercover checks conducted by Palo Alto Police Department to enforce no under age - 21 sales;</li> <li>Repeat violations are considered over 60-month time span.</li> </ul>	Same as current ordinance but: <ul style="list-style-type: none"> <li>repeat violations of sales to anyone under age 21 are considered over 60-month time span;</li> <li>Retailer would lose exemption if two under age-21 sales violations occurred within 24 months.</li> </ul>

**Additional State and Federal Restrictions** (discussed in Section 2 of this report)

- Effective January 1, 2020 SB 39, Hill requires signature of a person 21 years of age or older for delivery of an online tobacco product sale;
- Effective February 6, 2020 the United States Food and Drug Administration prohibits all retailers from selling flavored cartridge-based e-cigarette products. **The following products are exempted:** tobacco and menthol flavors, e-liquid flavors used in tank-based systems, and in disposable, single-use “disposable” electronic cigarettes.



**CITY OF PALO ALTO**  
**Public Works**

2501 Embarcadero Way  
Palo Alto, CA 94303

February 18, 2020

Dear Business Owner,

You are receiving this letter because Palo Alto City Council will be voting on proposed changes to the City of Palo Alto Ordinance Code 4.64 *Permits for Retailers of Tobacco Products* (TRP) which may impact your business.

On December 9, 2019, Palo Alto City Council directed City staff to recommend additional measures to address the rapid increase in use of e-cigarettes and vaping products among youth. This included direction to adopt the updated requirements of the Santa Clara County Tobacco Retail Permit Ordinance passed by Santa Clara County Board of Supervisors on November 5, 2019. The key proposed changes are summarized below:

- 1. For “adult-only (over age-21) tobacco stores” where 60% gross revenue is from tobacco products, the primary proposed TRP changes would:**
  - a) Prohibit the sale and distribution of all electronic cigarette products, e.g., devices such as e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah, or any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system);
  - b) Prohibit the sale of flavored tobacco products. Current ordinance requirements allow adult-only stores to sell flavored tobacco products;
  - c) Extend the look-back” violation period from 24 months to 60 months.
  
- 2. For all other retailers, the proposed changes to the Ordinance Code would:**
  - a) Prohibit the sale and distribution of all electronic cigarette products e.g., devices such as e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah, or any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system;
  - b) Extend the look-back violation period from 24 months to 60 months.

To help retailers understand the proposed new ordinance requirements a *Summary of the Tobacco Retail Permit Requirements* and a list of *Frequently Asked Questions* are included as attachments.

**Palo Alto City Council will vote on the proposed Tobacco Retail Permit Ordinance during the April 6, 2020 City Council Meeting** (6:00pm, 250 Hamilton Avenue, Palo Alto, City Council Chambers). Council meeting agendas are subject to change so please check the agenda online before attending. The proposed ordinance changes and staff report are posted two weeks before the Council meeting at [cityofpaloalto.org/gov/depts/cou/council\\_agendas.asp](http://cityofpaloalto.org/gov/depts/cou/council_agendas.asp). Retailers may attend the Council meeting to provide public comment, or email [citycouncil@cityofpaloalto.org](mailto:citycouncil@cityofpaloalto.org).

For more information [cityofpaloalto.org/smokingordinance](http://cityofpaloalto.org/smokingordinance), email [smoking@cityofpaloalto.org](mailto:smoking@cityofpaloalto.org), or call (650) 329-2122.

Sincerely,

Phil Bobel, Assistant Director  
City of Palo Alto Public Works Department



[cityofpaloalto.org](http://cityofpaloalto.org)



## City of Palo Alto Tobacco Retail Permit Ordinance (Municipal Code 4.64)

### *Frequently Asked Questions*

On December 9, 2019, Palo Alto City Council directed City staff to revise the City's current Tobacco Retail Permit Ordinance (TRP) to further restrict the sale and distribution of all e-cigarette products and flavored tobacco products in Palo Alto. The direction was in response to public concern about increased use of e-cigarette products and vaping among youth, and more than 1,600 cases of related lung injury and 34 confirmed deaths nation-wide in 2019.

The following information provides answers to frequently asked questions about the proposed changes to Palo Alto's Tobacco Retail Permit Ordinance.

**1. *What is the difference between the California Cigarette and Tobacco Products Retailer License and the Santa Clara County Tobacco Retail Permit?***

Tobacco retailers must maintain both a [California Cigarette and Tobacco Products Retailer License](#) (\$265 per year) and a [Santa Clara County Tobacco Retail Permit](#) (\$425 per year). The TRP is administered by the Santa Clara County Department of Environmental Health. The TRP requires additional measures beyond State requirements to curb youth smoking.

**2. *How are Electronic Cigarette Products and Flavored Tobacco Products defined?***

An "Electronic Cigarette Product (or e-cigarette)" is any device or delivery system used to deliver nicotine in aerosolized or vaporized form, including e-cigarettes, e-cigars, e-pipes, vape pens, or e-hookahs, or any component, part, or accessory of such a device or delivery system that is used during its operation. *Electronic Cigarette Products also include flavored and unflavored liquids or substances containing nicotine*, whether sold separately or sold in combination with any device or delivery system. Specific examples include: e-juice or liquid (flavored or unflavored), e-cigarette pods or cartridges (flavored or unflavored), any e-cigarette devices, puff bars or disposable e-cigarette products.

A "Flavored Tobacco Product" includes flavored cigarettes, cigarillos or smokeless tobacco that imparts a characterizing taste or smell other than tobacco. Examples include: menthol, mint, wintergreen, fruit, candy, alcohol or spice flavors.

**3. *What is considered an "adult-only" tobacco store or retailer? "Adult-only" tobacco stores:***

- Primarily sell tobacco products;
- Generate more than 60% of gross revenue from tobacco products or paraphernalia;
- Are required to post a sign outside the location clearly stating that anyone under age 21 is prohibited from entering the premises;
- Do not sell alcohol or food for onsite consumption.

**4. *What are the new proposed requirements in the revised Tobacco Retail Ordinance?***

If City Council approves the new Ordinance requirements, all retailers would be restricted from selling e-cigarette products and "adult-only (over age-21)" stores would no longer be allowed to sell any flavored tobacco products.

5. ***I am an “adult-only (over age 21)” tobacco retailer in Palo Alto. What would the new Ordinance requirements be for my business?*** Under new Ordinance requirements, these retailers would no longer be able to sell any Flavored Tobacco Products or Electronic Cigarette Products.
6. ***I am a retailer (not an over age 21 Tobacco Retailer) in Palo Alto. What would the new requirements be for my business?*** For these retailers, the new Ordinance would prohibit the sale of all Electronic Cigarette Products. Ordinance requirements that became effective January 1, 2019 prohibiting the sale Flavored Tobacco Products would remain.
7. ***Which tobacco products or e-cigarette products can retailers or adult-only tobacco retailers sell under the proposed Ordinance revisions?*** Retailers would be able to sell smoking cessation products that have been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, and non-flavored tobacco products such as cigarettes, smokeless/chewing tobacco, cigars, cigarillos/little cigars, and sisha (hookah tobacco). **No e-cigarette products of any kind would be allowed for sale.**
8. ***When would the new Ordinance take effect?***

If approved by City Council, the revised Tobacco Retail Permit Ordinance would become effective on the annual renewal date of each retailer’s permit, and all retailers regardless of their annual permit start date would be required to comply by July 1, 2020. If you have questions about your permit expiration date, please contact Don Tran at [don.tran@phd.sccgov.org](mailto:don.tran@phd.sccgov.org), Santa Clara County Public Health Department.
9. ***How would the Ordinance be enforced?***

The County of Santa Clara Department of Environmental Health conducts yearly inspections of all tobacco retailers. In addition, the City of Palo Alto Police Department conducts annual undercover youth decoy checks to confirm that retailers comply with Ordinance requirements.
10. ***What are the proposed penalties for not complying with the new Ordinance requirements?***

Administrative fines up to \$500 and permit suspensions for up to one year may be imposed under the proposed Ordinance.
11. ***How do I provide input to City Council about the proposed Ordinance changes?***

Palo Alto City Council will vote on the proposed Tobacco Retail Permit Ordinance during the April 6, 2020 City Council Meeting (6:00pm, 250 Hamilton Avenue, Palo Alto, City Council Chambers). Retailers may attend the Council meeting to provide public comment, email [citycouncil@cityofpaloalto.org](mailto:citycouncil@cityofpaloalto.org), or mail comments to City Council, 250 Hamilton Avenue, Palo Alto, CA 94301. Please note that Council Meeting agendas are subject to change so check the agenda online before attending. The proposed Ordinance changes and staff report will be posted two weeks before the Council meeting at [http://www.cityofpaloalto.org/gov/depts/cou/council\\_agendas.asp](http://www.cityofpaloalto.org/gov/depts/cou/council_agendas.asp).

For more information visit [cityofpaloalto.org/smokingordinance](http://cityofpaloalto.org/smokingordinance), email [cleanbay@cityofpaloalto.org](mailto:cleanbay@cityofpaloalto.org), or call (650) 329-2122.

# SUMMARY OF SMOKING AND VAPING ORDINANCE REQUIREMENTS



The City of Palo Alto has two ordinances which restrict smoking to protect public health. The ordinances are summarized below. For more information visit [cityofpaloalto.org/smokingordinance](http://cityofpaloalto.org/smokingordinance), call (650) 329-2122, or email [smokingordinance@cityofpaloalto.org](mailto:smokingordinance@cityofpaloalto.org).

## 1. Municipal Code 9.14-Smoking and Tobacco Regulations

*This ordinance restricts where tobacco may be used. Smoking/vaping is prohibited in:*

- Public spaces, e.g., all parks, open spaces and Palo Alto facilities commercial dining areas, entryways, public events, recreation areas, service areas, commercial indoor areas, outdoor service areas (bus stops, ATMs, and ticket lines), employment places, construction worksites;
- The Downtown Business District (the University Avenue area);
- 25 feet from any door or window to any enclosed area;
- All multi-unit residences with two or more units and common areas, excluding accessory dwelling units, and junior accessory dwelling units;
- **Exceptions:** designated smoking areas established by commercial areas that are at least 25 feet away from any windows or doors to enclosed areas; and that include receptacles to control litter.

## 2. Municipal Code 4.64-Permits for Retailers of Tobacco Products (TRP)

*This ordinance restricts where and which tobacco products may be sold. The current Tobacco Retail Permit:*

- Prohibits pharmacies and vending machines from selling tobacco products;
- Retailers must display a Tobacco Retail Permit and new retailers are not eligible for a permit if their business is located within 500 feet of another retailer or 1,000 feet of a school;
- Retailers such as gas stations and liquor stores can currently sell e-cigarette devices but not flavored tobacco products or flavored e-liquids;
- Flavored tobacco products may only be sold at “adult-only (over age-21)” stores;
- Limits storefront advertising of tobacco products;
- Requires the County to administer permits, and Palo Alto Police Department to provide youth decoy undercover checks.

### The proposed revisions to the TRP would:

- Prohibit the sale and distribution of all Electronic Cigarette Products at all stores (e.g, gas stations, liquor stores and adult-only stores);
- Prohibit the sale of flavored tobacco products at adult-only stores;
- Extend span of time over which repeat violations are considered from 24 months to 60 months after the first violation so that the number of violations a retailer might accrue with escalating penalties (fines, permit suspensions) would be considered over a span of five years instead of two years.

### Definitions:

1. An “Electronic Cigarette Product” is:

- a) any device or delivery system used to deliver nicotine in aerosolized or vaporized form, including e-cigarettes, e-cigars, e-pipes, vape pens, or e-hookahs, or any component, part, or accessory of such a device or delivery system that is used during its operation.
- b) flavored and unflavored liquids or substances containing nicotine. Specific examples include: e-juice or liquid (flavored or unflavored), e-cigarette pods or cartridges (flavored or unflavored), any e-cigarette devices, puff bars or disposable e-cigarette products.

2. A “Flavored Tobacco Product” includes flavored cigarettes, cigarillos or smokeless tobacco that imparts a characterizing taste or smell other than tobacco. Examples include: menthol, mint, wintergreen, fruit, candy, alcohol or spice flavors.

