

ORDINANCE NO. 2026

AN ORDINANCE OF THE CITY OF BURLINGAME AMENDING CHAPTER 8.18 OF THE BURLINGAME MUNICIPAL CODE TO ALLOW ON-SITE CONSUMPTION OF HOOKAH (SHISHA) TOBACCO AND ADDING A NEW CHAPTER 8.19 TO TITLE 8 OF THE BURLINGAME MUNICIPAL CODE ESTABLISHING A TOBACCO RETAILER PERMIT PROGRAM; CEQA DETERMINATION: EXEMPT PURSUANT TO STATE CEQA GUIDELINES SECTIONS 15378 AND 15061(b)(3)

WHEREAS, on June 19, 2018, the San Mateo County Board of Supervisors approved an Ordinance that prohibited the sale of flavored tobacco in unincorporated areas of the County; and

WHEREAS, in 2019, the Burlingame City Council adopted Ordinance 1970, codified in the Burlingame Municipal Code (BMC) as Chapter 8.18, "Smoking," of Title 8, which enacted a similar prohibition for the sale of flavored tobacco products within City limits; and

WHEREAS, in 2020, California passed Senate Bill 793, which enacted a statewide ban on Flavored Tobacco products effective December, 2022; and

WHEREAS, while the City of Burlingame and San Mateo County's flavored tobacco bans prohibited the sale of hookah (shisha) tobacco, the State's flavored tobacco ban allowed an exception for on-site hookah consumption if permitted by the local jurisdiction(s); and

WHEREAS, at their regularly scheduled meeting on November 20, 2023, the Burlingame City Council considered whether to amend the City's flavored tobacco ban to create an exception for on-site hookah consumption; and

WHEREAS, following public comment from members of the community and other interested parties, the City Council directed staff to prepare an amendment to the City's flavored tobacco ban to permit on-site hookah consumption, but to require any hookah retailer to offer a tobacco-free hookah alternative; and

WHEREAS, at the November 20, 2023 meeting, the City Council also considered whether to pursue a Tobacco Retailer Permit Program; and

WHEREAS, an updated Tobacco Retailer Permit Program was recently adopted by San Mateo County to combat youth tobacco sales through tougher enforcement measures; and

WHEREAS, the County has encouraged its municipalities to adopt an identical program, and has incentivized adoption by offering to perform the administration of any identical program; and

WHEREAS, since Burlingame anticipates permitting on-site hookah consumption while the County considers it prohibited, the City is unable to adopt an identical permit program and is therefore unable to avail itself of the County's administration and enforcement; and

WHEREAS, the City Council still wishes to pursue a Tobacco Retailer Permit Program for the reasons stated by the County, including stronger enforcement to combat youth tobacco sales and addiction; and

WHEREAS, understanding the City's proposed stance on a flavored tobacco exception for hookah, the County has still encouraged the City to adopt an identical permit program, with the only exception being the allowance of on-site hookah consumption; and

WHEREAS, the City Council has directed staff to draft this Ordinance to create the program as described above; and

WHEREAS, based upon the recitals above, the City Council finds that the amendments to Chapter 18 of Title 8 of the Burlingame Municipal Code are necessary for the protection of public health, safety, and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME DOES ORDAIN AS FOLLOWS:

Section 1. The Recitals set forth above are true and correct, and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council hereby finds that this Ordinance is in the public interest and are necessary for the protection of public health, safety, and welfare.

Section 3. The Ordinance is not a project within the meaning of section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

Section 4. 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 City Council of the City of Burlingame hereby declares that it would 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 unconstitutional.

Section 5. Chapter 8.18, "Smoking," of Title 8 of the Burlingame Municipal Code is amended as reflected in Exhibit A, attached hereto and incorporated herein by reference. Exhibit A generally shows additions with underlined text and deletions with ~~strike-out text~~. The Sections of the Chapter which do not include amendments are not shown in this exhibit, and remain unchanged.

Section 6. Chapter 8.19, "Tobacco Retailer Permit," of Title 8 is hereby added to the Burlingame Municipal Code, as reflected in Exhibit B, attached hereto and incorporated herein by reference.

Section 7. Sections 5 and 6 of this Ordinance shall be codified in the Burlingame Municipal Code. Sections 1, 2, 3, 4, 7, 8 and 9 shall not be so codified.

Section 8. This Ordinance shall go into effect 30 days following its adoption.

Section 9. The City Clerk is directed to publish this Ordinance in a manner required by law.



Donna Colson, Mayor

I, Meaghan Hassel-Shearer, City Clerk of the City of Burlingame, certify that the foregoing ordinance was introduced at a public hearing at a regular meeting of the City Council held on the day of March 4, 2024, and adopted thereafter on the 18th day of March, 2024, by the following vote:

AYES: Councilmembers: BROWNRIGG, COLSON, ORTIZ, STEVENSON
NOES: Councilmembers: BEACH
ABSENT: Councilmembers: NONE



Meaghan Hassel-Shearer, City Clerk

EXHIBIT A

Chapter 8.18 – Smoking

8.18.010 Findings and purpose.

8.18.020 Definitions.

8.18.030 Smoking limitations in city-owned or city-controlled facilities and vehicles.

8.18.040 Prohibition of smoking in public places.

8.18.050 Regulation of smoking in places of employment.

8.18.055 Multi-family housing.

8.18.060 Where smoking not regulated.

8.18.070 Posting of signs.

8.18.080 Violations.

8.18.090 Nondiscrimination and prohibition on retaliation.

8.18.100 Tobacco vending machines prohibited except in bars.

8.18.110 Enforcement of Labor Code Section 6404.5.

8.18.120 Sale of flavored tobacco products prohibited.

8.18.120 Sale of flavored tobacco products prohibited.

(a) Definitions. For the purposes of this section, the following definitions shall govern unless the context clearly requires otherwise:

(1) “Characterizing flavor” means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a characterizing flavor.

(2) “Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

(3) “Distinguishable” means perceivable by either the sense of smell or taste.

(4) “Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor.

(5) “Labeling” means written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.

(6) “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold, or offered for sale, to a consumer.

(7) “Tobacco product” means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, including any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah and the nicotine-containing liquids manufactured for use in such devices.

(8) “Tobacco retailer” means any store, stand, booth, concession or any other enterprise, including an online or e-commerce vendor, that engages in the retail sale of tobacco products, including, but not limited to, stores that engage in the retail sale of food items. This definition shall apply only to this Section.

(b) Sale or Offer for Sale of Flavored Tobacco Products Prohibited.

(1) The sale or offer for sale within the city of Burlingame, including a sale transacted remotely with delivery to an address within Burlingame, by any person or tobacco retailer of any flavored tobacco product is prohibited and no person or tobacco retailer shall sell, or offer for sale, any flavored tobacco product.

(A) The sale of Hookah/Shisha tobacco for immediate on-site consumption by a tobacco retailer holding a valid and unexpired City of Burlingame Tobacco Retailer Permit that specifically permits on-site hookah sales is exempted from this prohibition, so long as the tobacco retailer is in compliance with the permit and Chapter 8.19 of this Title, as may be amended.

(2) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor including, but not limited to, text, color, and/or images on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

(c) Enforcement—Violation a Public Nuisance. The provisions of this section shall be enforced through the mechanisms provided in Title 1 of this code, and violations may be subject to administrative, civil, or criminal remedies as determined within the discretion of the city attorney as prosecutor. Violation of the provisions of this section is deemed to constitute a public nuisance and may be abated as such. Further, violation of this section shall constitute grounds for revocation of a violator’s business license under Section 6.04.280. These remedies are in addition to, and not in place of, all enforcement options available to the City through Chapter 8.19 of this Title as may be amended.

(d) No Conflict with State or Federal Law. Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.

EXHIBIT B

Title 8 HEALTH AND SANITATION

8.04 HEALTH NOTICES

8.08 ENVIRONMENTAL HEALTH

8.10 REGULATING THE USE OF DISPOSABLE FOOD SERVICE WARE

8.12 RESTRICTION OF THE USE OF SINGLE-USE CARRY-OUT BAGS BY RETAILERS

8.15 ORGANIC WASTE DISPOSAL REDUCTION

8.16 SOLID WASTE

8.17 RECYCLING AND DIVERSION OF DEBRIS FROM CONSTRUCTION AND DEMOLITION

8.18 SMOKING

8.19 TOBACCO RETAILER PERMIT

Chapter 8.19 - TOBACCO RETAILER PERMIT

8.19.100 - Definitions.

(a) "Characterizing Flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.

(b) "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.

(c) "Consumer" means a Person who purchases a Tobacco Product for consumption.

(d) "Coupon" means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

(e) "Director" means the Chief of Police, or his or her designee.

(f) "Distinguishable" means perceivable by either the sense of smell or taste.

(g) "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, or vape pen. Electronic Smoking Device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic. "Electronic Smoking Device" does 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 such product is marketed and sold solely for such an approved purpose.

(h) "Flavored Tobacco Product" means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.

(i) "Full Retail Price" means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

(j) "Hookah" means a type of waterpipe, used to smoke shisha or other Tobacco Products, with a flexible tube for drawing aerosol through water. Components of a Hookah may include heads, stems, bowls, and hoses.

(k) "Hookah Tobacco Retailer" means a Tobacco Retailer that is engaged in the retail sale of shisha Tobacco products, Hookah, and Hookah smoking accessories that are to be consumed on-site immediately after purchase. A Hookah Tobacco Retailer is a type of Tobacco Retailer for purposes of this Chapter.

(l) "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its packaging.

(m) "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold, or offered for Sale, to a Consumer.

(n) "Permit" or "Tobacco Retailer Permit" means a valid permit issued by the Director to a Person to act as a Tobacco Retailer.

(o) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other entity.

(p) "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail establishment Sells other retail goods in addition to prescription pharmaceuticals.

(q) "Sale" or "Sell" means transfer to, exchange, barter, or distribute for a commercial purpose.

(r) "Self-Service Display" shall be defined as the open display or storage of Tobacco Products in a manner that is physically accessible to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

(s) "Shisha Tobacco Product" means a Tobacco Product smoked or intended to be smoked in a Hookah. "Shisha Tobacco Product" includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. "Shisha Tobacco Product" does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic Tobacco Product.

(t) "Tobacco Paraphernalia" means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.

(u) "Tobacco" or "Tobacco Product(s)" means:

(1) any product containing, made of, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(2) any Electronic Smoking Device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic; or

(3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, whether natural or synthetic, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

(4) "Tobacco Product" does 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 such product is marketed and sold solely for such an approved purpose.

(v) "Tobacco Product Flavor Enhancer" means a product designed, manufactured, produced, marketed or sold to produce a Characterizing Flavor when added to a Tobacco Product.

(w) "Tobacco Retailer" means any Person who Sells, or offers for Sale, Tobacco Products. This definition is without regard to the quantity of Tobacco Products sold or offered for Sale.

(x) "Youth-Populated Area" means a parcel of real property that is occupied, in whole or in part, by any of the following:

- (1) a private or public school that educates children in grades kindergarten through high school;
- (2) a library that is open to the public;
- (3) a playground that is open to the public;
- (4) a Youth Center, defined as a facility where children ages 6 to 17 come together for programs and activities;
- (5) a Recreation Facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. "Recreation Facility" includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;
- (6) a public or private college or university that serves as an institution for education beyond the high school level;
- (7) a licensed child-care facility or preschool, other than a small-family day care home or a large-family daycare home as defined in California Health & Safety Code § 1596.78.

8.19.110 - Requirement for a Permit.

(a) No Tobacco Retailer or other Person shall Sell or offer for Sale any Tobacco Product without a current and valid Tobacco Retailer Permit from the City of Burlingame for each location where such activities are conducted.

(b) Permits are valid for one year and must be renewed annually by the Permit holder in order to continue to Sell or offer for Sale any Tobacco Product. A Retailer must obtain a separate Permit for each location at which any Tobacco Product will be Sold, offered for Sale or distributed. A Permit shall expire at the end of its term, unless renewed prior to its expiration, and the Tobacco Retailer must obtain a new Permit prior to any further Sale, offer for Sale, or distribution of any Tobacco Product.

(1) The City will permit no more than two (2) Hookah Tobacco Retailers within the City limits. To become a Hookah Tobacco Retailer, the applicant must specifically note this request upon their Tobacco Retailer Permit application, and must otherwise comply with all other requirements of this Chapter. This includes, but is not limited to, the additional requirements for the Sale of Hookah tobacco located in Section 8.19.160.

(i) A Hookah Tobacco Retailer is also required to offer customers at least one (1) non-Tobacco, non-nicotine Hookah alternative.

(c) No Tobacco Retailer shall violate, or cause or allow the Tobacco Retailer's agents or employees to violate, any provision of this Chapter or any other local, state, or federal law applicable to Tobacco Products or Tobacco Retailing.

(d) Tobacco Retailers are responsible for the actions of their employees and agents relating to the Sale, offer to Sell, and furnishing of tobacco products at the retail location. The Sale of any Tobacco Product by an of a Tobacco Retailer employee shall be considered an act of the Tobacco Retailer, and the permit holder shall be responsible for any and all penalties levied.

(e) Nothing in this Chapter shall be construed to penalize the purchase, use, or possession of a Tobacco Product by any Person not engaged in Tobacco Retailing.

8.19.120 - Permit is Nontransferable.

(a) Tobacco Retailer Permits are nontransferable as between Persons, locations, or otherwise. Any attempted transfer shall render the Permit null and void, and the Permit shall automatically expire.

(b) Notwithstanding any other provision of this Chapter, prior violations of this Chapter at a location shall continue to be counted against that location and Permit ineligibility and suspension periods shall continue to apply to that location unless:

(1) One hundred percent (100%) 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 the new owner(s); 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. An Arm's Length Transaction, for the purposes of this section, means a transaction in which two or more unrelated and unaffiliated parties agree on the transfer in question; the parties act independently and in their own self-interest; and the parties have equal bargaining power and symmetric information, leading the parties to agree upon fair-market terms.

8.19.130 - Permit Conveys a Limited, Conditional Privilege.

Nothing in this Chapter shall be construed to grant any Person or entity obtaining and maintaining a Permit any status or right other than the limited, conditional privilege to Sell Tobacco Products and act as a Tobacco Retailer at the location in the City identified on the face of the Permit for the period of time shown on the Permit. All Permits are issued subject to the City's right to amend this Chapter from time to time, and Retailers shall comply with all provisions of this Chapter, as amended.

8.19.140 - Application, Issuance and Renewal Procedure.

(a) Application for a Tobacco Retailer's Permit or the renewal of a Tobacco Retailer Permit shall be submitted in the name of the Person proposing to conduct retail Sales of Tobacco Products, referred to herein as the "Applicant," and shall be signed by such Person or an authorized agent thereof. All applications shall be submitted to the Director on a form supplied by the Director and contain, at a minimum, the following information:

(1) The name, address, telephone number, and email address of the Applicant;

(2) The business name, address, and telephone number of the location where Tobacco Products are proposed to be Sold, offered for Sale or distributed by the Applicant; and

(3) Proof that the location for which a Tobacco Retailer's Permit is sought has been issued a valid state license for the Sale of Tobacco Products, if the Tobacco Retailer Sells products that require such license;

(4) A statement whether or not the Tobacco Retailer or any agent of the Retailer has been found to have violated this Chapter or other applicable law governing Tobacco Products or Tobacco Retailing and, if so, the dates and locations of all such violations within the previous five years; and

(5) Such other information as the Director determines is necessary for implementation of this Chapter.

(6) An application for a new or renewal Permit will be denied if there are any outstanding fines or late fees issued by the Director, or during any period of suspension.

(7) It is the responsibility of each Permit holder to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer Permit. No Permit holder may rely on the issuance of a Permit as a determination by the City that the Permit holder has complied with all laws applicable to Tobacco Retailing. A Permit issued contrary to this Chapter or any other law, or on the basis of false or misleading information supplied by the Applicant, shall be revoked. Nothing in this Chapter shall be construed to vest in any Person or entity obtaining or maintaining a Tobacco Retailer's Permit any status or right to act as a Tobacco Retailer in contravention of any provision of law.

8.19.150 - Display of Permit.

Upon receipt of a complete application for a Tobacco Retailer Permit in compliance with the requirements of this Chapter, the Director may issue a Permit which, if issued, must be prominently displayed in a publicly visible location at the location where Tobacco Product Sales are conducted and permitted.

8.19.160 - Prohibitions Regarding Coupons, Discounts, Pharmacies, Flavored Tobacco, and Electronic Smoking Devices.

(a) No Tobacco Retailer shall do any of the following:

- (1) Honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than Full Retail Price;
- (2) Sell any Tobacco Product to a Consumer through a multiple package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Tobacco Product or any other item; or
- (3) Provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.

(b) No Person, Tobacco Retailer or other legal entity shall sell or distribute to a person any Electronic Smoking Device that delivers natural or synthetic nicotine or any other substance(s) to the person inhaling from the device. This includes any component, part, or accessory intended or reasonably expected to be used with the Electronic Smoking Device, whether or not Sold separately.

(c) No Person or Tobacco Retailer shall Sell or offer to Sell any Flavored Tobacco Product or Tobacco Product Flavor Enhancer. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

(d) Subdivision (c) does not apply to the Sale of flavored Shisha Tobacco Products for on-site consumption by a Hookah Tobacco Retailer if all of the following conditions are met:

- (1) The Hookah Tobacco Retailer has a valid license to sell Tobacco Products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code, and has a valid City of Burlingame Tobacco Retailer Permit noting permission to offer on-site Hookah consumption.
- (2) The Hookah Tobacco Retailer does not permit any person under 21 years of age to be present or enter the premises at any time.
- (3) The Hookah Tobacco Retailer shall operate in accordance with all relevant state and local laws relating to the sale of Tobacco Products.

- (4) If consumption of Tobacco Products is allowed on the premises of the Hookah Tobacco Retailer, the Hookah Tobacco Retailer shall operate in accordance with all state and local laws relating to the consumption of Tobacco Products on the premises of a Tobacco Retailer, including, but not limited to, Section 6404.5 of the California Labor Code, which may be updated from time to time.

(e) No Pharmacy or Pharmacy employee or agent shall Sell or offer to Sell any Tobacco Product. The Director shall not issue any Tobacco Retailer Permit to any Pharmacy.

8.19.170 - Packaging and Labeling.

No Tobacco Retailer or other Person shall Sell or offer for Sale any Tobacco Product to any Consumer unless the Tobacco Product: (1) is Sold in the original manufacturer's Packaging intended for Sale to Consumers; (2) conforms to all applicable federal Labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

8.19.180 - Self-Service Displays Prohibited; On-Site, In-Person Sales Required.

(a) Tobacco Retailing by means of a Self-Service Display is prohibited.

(b) All Sales of Tobacco Products and Tobacco Paraphernalia shall be conducted in-person, over the counter, in the permitted location.

8.19.190 - Notice of Minimum Age for Purchase of Tobacco Products.

Tobacco 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. The form and content of such notice shall be subject to the approval of the Director.

8.19.200 - Positive Identification Required.

No Tobacco Retailer or other Person shall Sell or offer to Sell a Tobacco Product to another Person without first verifying by means of government-issued photographic identification that the recipient is at least the minimum legal sales age required under state law to purchase a Tobacco Product.

8.19.210 - Minimum Age for Individuals Selling Tobacco Products.

No Tobacco Retailer shall allow, at its retail location, any individual who is younger than 21 years of age to Sell or offer to Sell Tobacco Products.

8.19.220 - Display or Offers to Sell Tobacco Products Without Tobacco Retailer Permit Prohibited.

A Tobacco Retailer without a current valid Permit:

(a) Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a Permit.

(b) Shall not display any advertisement relating to Tobacco Products that offers the Sale of such products from the Tobacco Retailer's location.

8.19.230 - Limits on Eligibility for a Permit.

(a) No Tobacco Retailer's Permit may be issued to authorize Tobacco Retailing at or from other than a fixed location. For example, Sales by Persons on foot or from vehicles or other forms of mobile vending are prohibited.

(b) No Tobacco Retailer's Permit may be issued to authorize Sales of Tobacco Products at a temporary event, such as flea markets and farmers' markets.

(c) No new Tobacco Retailer Permit may be issued to authorize Tobacco Product Sales at any location within 1,000 feet of a Youth-Populated Area, as measured by a straight line from the nearest point of the property line of any parcel on which a Youth-Populated Area is located and any point along the property line of the parcel on which the Permit applicant has or proposes to locate the business.

(d) No new Tobacco Retailer's Permit may be issued for a location which is within 500 feet of a location already occupied by another Tobacco Retailer, as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing Tobacco Retailer's business is located. A Hookah Tobacco Retailer is exempt from this requirement solely for the sale of Hookah (shisha) tobacco, but may not be located within 500 feet of another Hookah Tobacco Retailer.

(e) The Sale of Tobacco Products and accessories is prohibited in City owned structures and in any area of a structure leased by the City, wherever located.

(f) For purposes of this section, any Tobacco Retailer with a valid license to sell tobacco within the State of California will be permitted remain at their current location, so long as they obtain a City Tobacco Retailer Permit within twelve (12) months of the effective date of this Ordinance. To be eligible, the retailer must have a valid, unexpired tobacco license issued by the State of California that predates the effective date of this Ordinance, and must list the address at which the tobacco retailer wishes to continue to conduct business.

8.19.240 - Fees for Permit.

Tobacco Retailers shall pay all applicable fees at the rates set forth in the City's Master Fee Schedule, which may be updated from time to time. Fees shall be used by the Director to administer and enforce this Chapter.

8.19.250 - Enforcement.

(a) The Director or the Director's designee shall enforce this Chapter consistent with the provisions herein.

(b) Violations of this Chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.

(c) This Section shall not be interpreted to limit the applicable civil or administrative remedies available under law.

8.19.260 - Public Nuisance.

Any violation of this Chapter is hereby declared a public nuisance, subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures of contained in this Code and state law, including but not limited to, an action for abatement or injunctive relief

8.19.270 - Compliance Monitoring.

(a) Compliance with this Chapter shall be monitored by the Director. In addition, any peace officer may enforce the provisions of this Chapter. The Director may designate additional persons to monitor and facilitate compliance with this Chapter.

(b) Individuals designated to enforce the provisions of this Chapter shall inspect each Tobacco Retailer at least two times during each twelve-month period to determine if the Tobacco Retailer is complying with all applicable laws. Compliance checks shall take place during normal business hours, with or without notice. If a violation has occurred, the Tobacco Retailer shall be inspected again within three months. All permitted premises must be open to inspection by designated persons during regular business hours.

(c) Nothing in this section shall create a right of action in any Tobacco Retailer or other person or entity against the City or its agents.

8.19.290 - Suspension or Revocation of Permit.

(a) Grounds for Suspension or Revocation.

(1) A Tobacco Retailer Permit may be suspended or revoked, as set forth below in subdivision (b), if any court of competent jurisdiction determines, or the Director finds, based on a preponderance of the evidence after notice and opportunity for the Tobacco Retailer to be heard, that either of the following violations have occurred:

i. After the Permit was issued it is determined that the application for the Permit is incomplete or inaccurate.

ii. The Tobacco Retailer or Tobacco Retailer's agent has violated any of the requirements, conditions, or prohibitions of this Chapter or any applicable local, state, or federal tobacco-related law.

(2) Notwithstanding the foregoing, a Tobacco Retailer Permit shall be suspended or revoked, for the maximum time periods and as set forth in subdivision (b), if any court of competent jurisdiction determines, or the Director finds, based on a preponderance of evidence and after notice and opportunity for the Tobacco Retailer to be heard, that the Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has Sold Tobacco Products to any Person(s) under the age of 21 years.

(b) Time Period of Suspension of Permit.

(1) Upon the first violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to 30 days.

(2) Upon the second violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to 90 days.

(3) Upon the third violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to one year.

(4) Upon the fourth violation within any sixty (60) month period, the Permit to Sell Tobacco Products shall be revoked. If a Permit is revoked, the Retailer shall not be eligible for a new Permit for a period of five (5) years after the effective date of revocation.

(c) Effective Date of Suspension or Revocation.

Within ten (10) calendar days of the hearing, the Director shall issue written findings and an order regarding the suspension or revocation, which order will be effective ten (10) calendar days from the date such order was sent by certified mail to the Retailer, unless a timely appeal is filed in accordance with subsection (d).

(d) Appeal of Suspension or Revocation.

The decision of the Director is appealable to City Manager or his/her designee.

(1) An appeal must be in writing, be addressed to the Director and be hand-delivered to Burlingame Police Department Headquarters during ordinary business hours.

(2) An appeal must be received by the Director before the effective date of suspension or revocation provided by subsection (c) in order to be considered.

(3) The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the City Manager.

(4) The decision of the City Manager shall be a final administrative order, with no further administrative right of appeal.

8.19.300 - Administrative Fine.

(a) Grounds for Fine. A fine shall be imposed on a Tobacco Retailer upon findings made by the Director, based on a preponderance of the evidence, that any Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has violated any of the requirements, conditions, or prohibitions of this Chapter. A fine shall be imposed in the maximum amounts set forth in subsection (b) of this section upon findings made by the Director that the Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has Sold any Tobacco Product to any Person(s) under the age of 21 years. Any administrative fine shall be imposed solely against the Tobacco Retailer, not the Tobacco Retailer's employees or agents.

(b) Amount of Fine. Upon written findings made by the Director under subsection (a), the person or entity holding the Tobacco Retailer Permit shall be subject to an administrative fine for each such violation as follows, notwithstanding any other provisions of the Burlingame Municipal Code:

(1) A fine not exceeding five hundred dollars (\$500) for a first violation within a sixty (60) month period; and

(2) A fine not exceeding one thousand dollars (\$1,000) for each subsequent violation within a sixty (60) month period.

(c) Each day that Tobacco Products are Sold or offered for Sale without a Permit or otherwise in violation of this Chapter shall constitute a separate violation. A finding of "offered for Sale" in violation of this Chapter will be made if Tobacco Products are either actually Sold and/or displayed in the retail establishment, or if advertisements offering to Sell Tobacco Products are visible to customers.

(d) Fine Procedures. Notice of the fine shall be served on the Tobacco Retailer by certified mail. The notice shall contain a description of the facts upon which the asserted violation is based and an advisement of the right to request a hearing before the Director contesting the imposition of the fine. Said hearing must be requested within ten calendar days of the date appearing on the notice of the fine. The decision of the Director shall be a final administrative order, with no administrative right of appeal.

(e) Failure to Pay Fine. If a fine imposed pursuant to this Chapter is not paid within 30 calendar days from the date appearing on the notice of the fine or of the notice of determination of the Director after the review provided for under subdivision (c) of this Section, the fine may be referred to a collection agency within or external to the City. In addition, any outstanding fines must be paid prior to the issuance of any new Permit or renewal of a Permit.

8.19.310 – Administrative Regulations

The Director may promulgate regulations to administer this Chapter.