



STAFF REPORT

AGENDA NO: 10b

MEETING DATE: November 18, 2024

To: Honorable Mayor and City Council

Date: November 18, 2024

From: Michael Guina, City Attorney – (650) 558-7204
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Subject: Introduction and First Reading of an Ordinance of the City of Council of the City of Burlingame Amending Chapter 8.19 of Title 8 of the Burlingame Municipal Code to Allow Existing Tobacco Retailer Permit Holders an Exemption from Certain Distance and Transfer Requirements for a Period of Two Years; CEQA Determination: Exempt Pursuant to State CEQA Guidelines Sections 15378 and 15061(b)(3)

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and adopt the first reading of the proposed Ordinance by taking the following actions:

1. Receive the staff report and ask any questions of staff.
2. Conduct a public hearing on the proposed Ordinance.
3. Close the public hearing, discuss the proposed Ordinance, and determine whether to bring the Ordinance back for adoption at a future Council meeting.
4. Direct the City Clerk to publish a summary of the Ordinance at least five days before proposed adoption.

BACKGROUND AND DISCUSSION

In 2023, San Mateo County Supervisors passed an ordinance to further regulate tobacco retailers in the unincorporated portions of the county. This new law, proposed by the County Health Department, expanded the program that was already in place, and increased penalties on businesses that sell tobacco products to minors in an effort to prevent youth nicotine addiction. It requires that all tobacco retailers obtain a "Tobacco Retailer Permit," and requires enforcement checks twice per year aimed at combatting youth tobacco sales. The law also prohibits issuing these permits to any location within 1,000 feet of a "youth populated area," including schools and playgrounds, or within 500 feet of an existing tobacco retailer. The County has continued to encourage cities within San Mateo County to adopt their model ordinance and has offered to administer the permit program and provide enforcement for cities that adopt it without alteration.

At the March 4, 2024 City Council Meeting, the Burlingame City Council adopted Ordinance No. 2026 (attached), which created a Tobacco Retailer Permit Program within the city limits. This program was codified into a new Burlingame Municipal Code Title 8, Chapter 8.19 – “Tobacco Retailer Permit.” The City’s program generally mirrored the recently adopted San Mateo County Tobacco Retailer Permit Program, except that it allowed an exemption for on-site hookah consumption and made other small administrative changes. Since the City Council did not adopt the County’s Ordinance in its totality, the County would not administer the City’s program. Instead, the Burlingame Police Department manages its administration and enforcement.

The City’s program has been in place for approximately six months, and the Burlingame Police Department continues to administer and enforce the program successfully. While the program itself has been well-received by the public, City staff has received feedback from some existing retailers that the distance and transfer requirements of the new program have created an issue with their plans to sell or relocate their property. The Economic Development Subcommittee discussed this topic at a regular meeting on October 16, 2024. At the meeting, Mayor Colson and Vice Mayor Stevenson expressed concern over how the new program’s quick effective date may have disrupted the short-term plans of existing tobacco retailers in the city. The Subcommittee specifically noted that the program’s distance and transfer limitations may have created a hardship on retailers by halting a transfer to a family member or disrupting their immediate plans to relocate their business. At the conclusion of this item, the Subcommittee directed staff to draft an ordinance that addressed these concerns through implementation of a two-year “grace period” for existing tobacco retailer permit holders to conduct limited transfers of their permit. This agenda item responds to that direction.

Proposed Ordinance

In the draft Ordinance, staff presents amendments to Burlingame Municipal Code Section 8.19.120 that would allow existing tobacco retailers to conduct a transfer of their permit for a two-year period in limited situations.

First, the amendments would allow existing retailers to transfer their permit to a new owner at the same physical location so long as there has been a complete transfer of ownership in an “Arm’s Length Transaction.” This transaction, and the corresponding transfer of the permit, must have been completed by January 1, 2027, to be effective. This amendment is made to address a portion of the noted concerns, as it allows for the bona-fide sale of a business that could continue operation at the same location.

Second, the amendments allow an existing tobacco retailer to transfer their permit to a new physical location. To be effective, the retailer must not propose any additional changes to the permit (such as a change in ownership), and the location may not be located within 250 feet of a youth-populated area. Finally, the new retail location must be occupied by the retailer prior to January 1, 2027, to be effective. Assuming these criteria are met, the retailer would not be subject to the remaining distance requirements found Section 8.19.230. This amendment addresses the concern expressed by retailers that the City’s program halted their short-term relocation plans by allowing existing retailers a brief period for relocation.

While the proposed amendments do not directly address transfer of a permit to a family member, staff will work with existing tobacco retailers during the initial renewal period to ensure the “applicant” is listed correctly on the permit. For example, a retailer may have mistakenly listed their own personal name on an application rather than a business name, or vice versa. During this renewal period, legitimate clarifications can be made to ensure the permit’s ownership is reflected properly.

FISCAL IMPACT

If a transfer is requested, staff time will be required to administer the transfer and re-issue the permit. The fiscal impact of this additional staff time is nominal and can be absorbed into current Department budgets.

Exhibits:

- Proposed Ordinance
- Ordinance No. 2026