

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY 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)**

**WHEREAS**, the U.S. Center for Disease Control and Prevention (“CDC”) and the U.S. Public Health Service estimates that exposure to secondhand smoke causes an estimated 41,000 deaths each year<sup>1</sup>; and

**WHEREAS**, the U.S. Environmental Protection Agency (“EPA”) has stated that the adverse health effects of second-hand smoke remain the same regardless of whether the exposure occurs indoors or outdoors, and that outdoor secondhand smoke inhalation poses health risks to children<sup>2</sup>; and

**WHEREAS**, the California Department of Public Health (“CDPH”) has found that as of 2019, only 6.9% of Californians currently smoke cigarettes<sup>3</sup>; and

**WHEREAS**, the Burlingame Municipal Code currently prohibits smoking in various portions of the City, including (but not limited to) buildings, restaurants, sports fields, and within 25 feet of most city-owned parks and facilities; 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 had encouraged its municipalities to adopt an identical program, and has incentivized adoption by offering to perform the administration of any identical program; and

**WHEREAS**, pursuant to Ordinance No. 2026, adopted March 18, 2024, the City Council did establish a Tobacco Retailer Permit Program, codified in Chapter 18.19,

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<sup>1</sup> U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014. Printed with corrections, January 2014.

<sup>2</sup> U.S. Environmental Protection Agency, *Is outdoor exposure to secondhand smoke comparable to indoors?* Accessed 10 March 2023. [www.epa.gov/indoor-air-quality-iaq/outdoor-exposure-secondhand-smoke-comparable-indoors](http://www.epa.gov/indoor-air-quality-iaq/outdoor-exposure-secondhand-smoke-comparable-indoors)

<sup>3</sup> California Department of Public Health, California Tobacco Control Program. *California Tobacco Facts and Figures 2021*. Sacramento, CA: California Department of Public Health; November 2021.

“Tobacco Retailer Permit,” of Title 8 of the Burlingame Municipal Code, which regulates the sale of tobacco in the City limits; and

**WHEREAS**, the City’s Tobacco Retailer Permit Program provided certain exemptions for on-site hookah consumption, thereby requiring the City to manage administration of the program through the Burlingame Police Department; and

**WHEREAS**, among other restrictions, the City’s Tobacco Retailer Permit Program established limitations on transfers of tobacco permits, and does not allow new tobacco retailers to be located within 500 feet of an existing tobacco retailer, or within 1,000 feet of a “youth populated area,” as defined by Ordinance No. 2026; and

**WHEREAS**, City staff has received feedback from members of the public that Ordinance No. 2026’s distance and transfer requirements have created a hardship for existing tobacco retailers who had been considering the movement or sale of their business; and

**WHEREAS**, the City Council now wishes to allow a short period of time for existing tobacco retailers to relocate or otherwise arrange the transfer or sale of their business without the distance and transfer limitations of Ordinance No. 2026.

**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.

**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 8.19 of Title 8 of the Burlingame Municipal Code is amended as reflected in Exhibit A, attached hereto and incorporated herein by reference. Exhibit A 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.** This Ordinance shall go into effect 30 days following its adoption.

**Section 7.** The City Clerk is directed to publish this ordinance in a manner required by law.

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Donna Colson, Mayor

I, MEAGHAN HASSEL-SHEARER, City Clerk of the City of Burlingame, certify that the foregoing ordinance was introduced at a regular meeting of the City Council held on 18th day of November 2024 and adopted thereafter at a regular meeting of the City Council held on the \_\_\_\_\_ day of \_\_\_\_\_ by the following votes:

AYES: COUNCILMEMBERS:  
 NOES: COUNCILMEMBERS:  
 ABSENT: COUNCILMEMBERS:

ATTEST: \_\_\_\_\_

Meaghan Hassel - Shearer, City Clerk

## EXHIBIT A

### Chapter 8.19 - TOBACCO RETAILER PERMIT

#### 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.

(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 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.

(c) Notwithstanding any other provision of this Chapter, an existing Tobacco Retailer Permit Holder may transfer their Permit to a Transferee at the same physical location under the following circumstances:

(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 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; and

(3) The transferring Tobacco Retailer had obtained a valid Tobacco Retailer Permit from the City prior to January 1, 2025; and

(4) The City is provided clear and convincing evidence that the transfer was effective on or before January 1, 2027.

(d) Notwithstanding any other provision of this Chapter, an existing Tobacco Retailer Permit Holder may transfer the location of their permit and not be subject to the distance limits set forth in Section 8.19.230(c) and Section 8.19.230(d) under the following circumstances:

(1) Other than the change in location, there are no additional changes made to the existing Tobacco Retailer Permit, including (but not limited) changes to persons or owners; and

(2) The new location is not located within 250 feet of a Youth-Populated Area; and

(3) The sale of tobacco at the new location complies with all other applicable local, state and federal laws and regulations, including (but not limited to) the City's Zoning Code; and

(4) The Tobacco Retailer had obtained a valid Tobacco Retailer Permit from the City prior to January 1, 2025; and

(5) The City is provided clear and convincing evidence that the Tobacco Retailer Permit Holder has executed a lease or purchase agreement for the new retail location, and that occupancy of the new location by the Tobacco Retailer Permit Holder will occur prior to January 1, 2027.

(e) If a transfer of a Tobacco Retailer Permit is completed pursuant to Paragraphs (c) or (d) above, prior violations of this Chapter by the former owner or location shall continue to be counted against the Transferee or location, respectively, and Permit ineligibility and suspension periods shall continue to apply.

(f) The exemptions to Tobacco Retailer Permit Transfers found in Paragraphs (c) and (d) of this Section shall expire at midnight on December 31, 2026.