



STAFF REPORT

AGENDA NO: 9c

MEETING DATE: November 20, 2023

To: Honorable Mayor and City Council

Date: November 20, 2023

From: Scott Spansail, Assistant City Attorney – (650) 558-7275
Kevin Gardiner, Community Development Director – (650) 558-7253

Subject: Adoption of an Ordinance Amending Chapter 8.18 of the Burlingame Municipal Code to Extend a Temporary Ban on Smoking in the Broadway Business Improvement District, and to Create a Temporary Ban on Smoking in the Burlingame Business Improvement District Through December 31, 2024, and to Make Other Amendments to this Chapter to Comply with State Law; CEQA Determination: Exempt Pursuant To State CEQA Guidelines Section 15378 and 15061(b)(3)

RECOMMENDATION

Staff recommends that the City Council adopt the proposed Ordinance amending Chapter 8.18 of the Burlingame Municipal Code to extend a temporary ban on smoking in the Broadway Business Improvement District (BID), and to create a temporary ban on smoking in the Downtown Burlingame Business Improvement District, through December 31, 2024. This proposed Ordinance would also make other amendments to this Chapter to ensure compliance with state law.

Recommended Procedure and Order of Operations:

- A. By motion, adopt the proposed Ordinance.
- B. Direct the City Clerk to publish a summary of the Ordinance within 15 days of adoption

BACKGROUND

At its April 3, 2023 regular meeting, the City Council adopted Ordinance No. 2016, which amended Chapter 8.18, "Smoking" of Title 8 of the Burlingame Municipal Code (BMC) to establish a pilot program that prohibits smoking in the Broadway commercial district for approximately eight months. When the program was adopted, the Council directed that it return prior to expiration to consider whether to make the program permanent, amend it to apply it to other commercial districts within the city, or allow it to expire.

At its October 2, 2023 meeting, the City Council further considered the Broadway pilot program. Following review of a survey that showed general support for this program, the City Council expressed their own support of the ban and discussed expanding the pilot to the City's other main pedestrian district on and around Burlingame Avenue. During the hearing, the Council also discussed whether this ban should apply to private property, such as back patios of restaurants or

bars, or only within the public right of way. At the conclusion of the hearing, a majority of the City Council expressed that they were in favor of extending the pilot program and expanding it to Downtown Burlingame, but that private property should be exempt from City regulation.

At its November 6, 2023 meeting, the City Council introduced and adopted the first reading of this proposed Ordinance and directed that it be brought back for second reading and final adoption. The staff report from the November 6, 2023 public hearing is attached for reference.

Proposed Ordinance

As discussed during the November 20, 2023 public hearing, the proposed Ordinance would expand the current Broadway pilot program to the boundaries of the Downtown Burlingame Business Improvement District. This ban would be in place until midnight on December 31, 2024. The proposed Ordinance further clarifies that this expanded pilot program would ban smoking in all outdoor spaces *within the public right of way*, but not to private property. This simply means that it would apply to all streets, sidewalks, public alleyways, and easements in the two districts but *not* private property, including private patios, even if the patios abut the public right of way. As parklets are located within the public right of way, this ban would apply to any smoking in these structures.

Private businesses in the pedestrian retail districts could legally allow smoking in their outdoor dining and/or patio spaces under this program. But it's important to note that this proposed Ordinance would not *require* a private business to allow smoking in open spaces; rather, it clarifies that the City's additional regulations do not apply to these areas.

Flavored Tobacco and Hookah

The proposed Ordinance does not address the City's current prohibitions on the sale of flavored tobacco (BMC 8.18.120), including the sale or use of hookah.

FISCAL IMPACT

There is no known fiscal impact to this proposed Ordinance.

Exhibits:

- Proposed Ordinance
- Staff report from November 6, 2023