



CITY COUNCIL AGENDA ITEM NO. F.1
08/22/2023

SUBJECT: Discussion regarding smoke shops and an interim urgency ordinance extending a moratorium on any new tobacco smoke shop

DEPARTMENT: Community Development Department

STAFF: Alexis Morris, Director of Community Development
Erik Nolthenius, Planning Manager

TITLE/RECOMMENDATION

It is recommended that the City Council adopt an ordinance extending the interim urgency ordinance that implemented a moratorium on new tobacco smoke shops in the city of Brentwood for an additional period of one year, to September 8, 2024 and provide staff with feedback regarding smoke shop rules and enforcement.

This proposed ordinance is intended to preserve the status quo while the City considers further regulations on tobacco sales and distribution. The ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, therefore, does not constitute the approval of a "project" under the California Environmental Quality Act (CEQA), and it is exempt from CEQA. (Public Resources Code § 21065, State CEQA Guidelines §§ 15060(c)(2)-(3), 15061(b)(3), 15064(d)(3), and 15378(a).)

FISCAL IMPACT

Thus far, only minor legal expenses of approximately \$1,000 have been incurred. There is no anticipated direct fiscal impact as a result of this proposed moratorium, because there are no pending applications for permits or other land use entitlements for new tobacco smoke shops that will be affected by its adoption.

There may be an indirect fiscal impact in the future, if the City moves forward with permanent bans and/or other regulatory measures regarding tobacco retailers in the city, but those impacts (if any) will be separately analyzed and addressed as appropriate at a later date, including future legal expenses of up to \$20,000. Legal expenditures related to the ordinance are funded by the General Fund.

BACKGROUND



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This action extends the interim urgency ordinance originally adopted by the City Council on September 27, 2022, which was subsequently extended on October 25, 2022, and is set to expire on September 8, 2023. By the end of the ordinance's term, the City Council must vote to extend the urgency ordinance again, let it expire, or adopt a regular ordinance to repeal and replace it.

Pursuant to Section 17.505.008, the Brentwood Municipal Code (BMC) presently authorizes tobacco and cigar lounges with smoking on-site in certain areas of the PD-55 zone (generally located east of the Sand Creek Road and Brentwood Boulevard intersection), and there only upon issuance of a conditional use permit. The City Council directed staff to regulate new tobacco smoke shops that sell products for off-site consumption. This use is currently (and has historically been) considered to be a general retail use under the Brentwood Municipal Code, and therefore permitted by right in any zoning district that allows general retail uses. There are currently no pending applications for tobacco or cigar smoke shop permits or associated land use entitlements in the city.

California Business and Professions Code Section 22971.3 authorizes cities to implement local tobacco licensing laws. The City Council recognized in its June 1, 2022 meeting that there are significant environmental and health effects to the community associated with tobacco that can only adequately be addressed by suspending approvals of new tobacco smoke shops within City limits. Doing so would provide staff time to study and analyze additional regulatory measures for a long-term solution, such as (but not limited to) measures that may extend up to a full prohibition on all retail tobacco smoke shops.

As used in this staff report and the attached draft ordinance, the term "tobacco smoke shop" is defined as:

a retailer whose main purpose is the sale of smoking and/or tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories for off-premises consumption at a retail establishment that either devotes more than (a) fifteen (15%) percent of its total floor area to smoking, drug, electronic cigarettes, electronic vapor devices, and/or tobacco paraphernalia, or (b) a two foot by four (2' by 4') foot (two (2'0") feet in depth maximum) section of shelf space for display of for-sale tobacco products and the sale of smoking and/or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store, gas station, or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall



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not be defined as a “tobacco smoke shop” and shall not be subject to the restrictions in this chapter.

Currently, there are approximately 10 permitted tobacco smoke shops operating within city limits. In order to properly study, analyze, and make recommendations concerning such permanent regulatory measures and a potential ban on tobacco retailers generally within City limits, the City Council unanimously adopted an interim urgency ordinance on September 27, 2022, to place a moratorium on the issuance of any permits, entitlements, or other approvals of new tobacco smoke shops within the city during the time the moratorium is in effect.

No new permit, license, or entitlement for any new tobacco smoke shop within the city is allowed during the moratorium. Existing tobacco smoke shops are permitted to apply for renewals of existing entitlements during the moratorium, which would be subject to approval or denial under existing standards. The City also reserves the right to suspend or revoke any existing permit, license, or entitlement of tobacco smoke shops under existing standards. The interim urgency ordinance was originally effective for 45 days, but was extended by the City Council on October 25, 2022 for an additional 10 months and 15 days, which is set to expire on September 8, 2023.

This action would extend the urgency ordinance adopted by the City Council for an additional one year, to September 8, 2024. This urgency ordinance will be followed by a regular ordinance sometime in the summer of 2024. The regular ordinance would be subject to review by both the Planning Commission and City Council, as it will be part of the zoning ordinance. The regular ordinance would take effect 30 days after adoption and would repeal and replace the urgency ordinance.

A permanent tobacco regulation will be included as part of the City’s focused zoning code update.

CITY COUNCIL STRATEGIC INITIATIVE

Not Applicable.

PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.



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DATE OF NOTICE

The City of Brentwood published a notice of public hearing in the Brentwood Press on August 11, 2023.

ENVIRONMENTAL DETERMINATION

As noted above, the proposed ordinance is intended to preserve the status quo while the City considers further regulations on tobacco sales and distribution. The ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, therefore, does not constitute the approval of a "project" under CEQA, and it is exempt from CEQA. (Public Resources Code § 21065, State CEQA Guidelines §§ 15060(c)(2)-(3), 15061(b)(3), 15064(d)(3), and 15378(a).)

ATTACHMENT(S)

1. Previous Action
2. Proposed Interim Urgency Ordinance