

**ORDINANCE NO.**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD EXTENDING THE INTERIM URGENCY ORDINANCE IMPLEMENTING A MORATORIUM ON THE ISSUANCE OF ANY NEW PERMIT, LICENSE, OR ENTITLEMENT FOR ANY NEW TOBACCO SMOKE SHOP IN THE CITY OF BRENTWOOD, PENDING COMPLETION OF A COMPREHENSIVE REVIEW OF THE CITY'S ZONING ORDINANCE, AND FINDING THE ACTION EXEMPT FROM CEQA**

**WHEREAS**, the City of Brentwood ("City") presently regulates tobacco smoke shops within the city as a general retail use as governed by various sections of the Brentwood Municipal Code ("BMC"), but the City now wishes to examine the desirability and feasibility of a more robust set of regulations and/or prohibitions concerning the establishment of new tobacco smoke shops within the city; and

**WHEREAS**, the City wishes to allow currently permitted and existing tobacco smoke shops to remain in operation, while also extending this interim urgency moratorium on new entitlements for tobacco smoke shops, in order to balance existing property rights against its consideration of the potential impacts that tobacco smoke shops may have on the public health, safety, and welfare, and evaluation of what City regulations and restrictions, if any, should be imposed on such activities; and

**WHEREAS**, for purposes of this interim urgency moratorium, the term 'tobacco smoke shop' shall be 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 for-sale tobacco products and 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 not be defined as a 'tobacco smoke shop' and shall not be subject to these restrictions;" and

**WHEREAS**, this interim urgency moratorium on new tobacco smoke shops in the city will give the City sufficient time to study, analyze, and report on the benefits and detriments of enacting a permanent ban on smoke shops, and to address any necessary modifications to the City's current tobacco regulations in the BMC as appropriate; and

**WHEREAS**, the City Council of the City of Brentwood is authorized, pursuant to Article 11, Section 7 of the California Constitution, to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

**WHEREAS**, California Government Code Section 65858 authorizes the City Council to adopt, by a four-fifths vote and without following the procedures otherwise required for the adoption of a zoning ordinance, an interim urgency ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council, planning commission, or planning department is considering, or studying, or intending to study within a reasonable time; and

**WHEREAS**, on September 27, 2022, the City Council adopted an interim ordinance via Urgency Ordinance No. 1046, implementing a 45-day moratorium on the issuance of any new permit, license, or entitlement for any new tobacco smoke shop in the city, pending completion of a comprehensive review of the City's zoning ordinance; and

**WHEREAS**, on October 25, 2022, the City Council adopted Urgency Ordinance No. 1050, extending the moratorium for an additional 10 months and 15 days, to September 8, 2023; and

**WHEREAS**, unless the City Council takes further action, Urgency Ordinance No. 1050 will cease to be in effect as of September 8, 2023; and

**WHEREAS**, City staff is still in the process of studying potential regulatory standards and location requirements for tobacco smoke shops, in order to determine whether and how such standards should be integrated into the Brentwood Municipal Code; and

**WHEREAS**, the City Council desires to maintain the protections of Urgency Ordinance No. 1050 while staff completes its work.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRENTWOOD** does ordain as follows:

**SECTION 1.** The recitals set forth above are hereby adopted as the findings of the City Council in connection with the adoption of this ordinance. In support of the recitals stated above, the City Council hereby finds and determines that it is necessary to adopt an interim urgency ordinance to prohibit new tobacco smoke shops, while City staff takes a reasonable time to consider and study further regulation and zoning procedures relating to such activities within the city. In addition, the City Council finds that the recitals and findings in Urgency Ordinance No. 1050 remain true and correct, and are incorporated herein by this reference.

**SECTION 2.** This Urgency Ordinance was noticed pursuant to Government Code section 65090 and the City Council conducted a public hearing pursuant to Government Code section 65858, subdivision (a).

**SECTION 3.** The interim ordinance adopted by Urgency Ordinance No. 1050 is extended by this Urgency Ordinance for a period of one year, or until September 8, 2024.

**SECTION 4.** The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the City Council finds that this ordinance is exempt under CEQA pursuant to Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) of the CEQA Guidelines because this ordinance will not cause a change in any of the physical conditions within the area affected by the ordinance.

**SECTION 5.** This Urgency Ordinance is necessary to protect the City and its residents, businesses, and visitors from the potential health and safety impacts of tobacco smoke shops under current City regulations, including concerns with neighborhood safety, effects on minors, location near sensitive uses, and other public health impacts, and to preserve the quality of life, health, safety, and welfare of the community.

**SECTION 6.** This Urgency Ordinance will be published in accordance with Government Code Section 36933 by either posting or publishing the Urgency Ordinance in accordance with that law.

**SECTION 7.** This Urgency Ordinance is adopted by a four-fifths vote of the Brentwood City Council. Any future extension of this Urgency Ordinance will require a four-fifths vote of the City Council.

**SECTION 8.** Ten days prior to the expiration of this Urgency Ordinance or any extension, the City Council will issue a written report describing the measures taken to alleviate the condition which led to the adoption of this Urgency Ordinance, as required under Government Code Section 65858, subdivision (d).

**THIS FOREGOING URGENCY ORDINANCE** was adopted at a regular meeting of the Brentwood City Council on the 22<sup>nd</sup> day of August, 2023 by the following vote:

AYES:  
NOES:  
ABSENT:  
RECUSE:

APPROVED:

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Joel Bryant, Mayor

ATTEST:

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Margaret Wimberly, MMC  
City Clerk