



---

**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**



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

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



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

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.



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

**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

## **PREVIOUS ACTION**

Previous actions related to this agenda item that were taken by the City Council are listed below. To view prior actions and materials, and Brentwood Municipal Code references in the staff report, as applicable:

- Visit [www.brentwoodca.gov/meetings](http://www.brentwoodca.gov/meetings), and select the meeting date(s) desired to see the reference materials and videos.
- Visit [www.brentwoodca.gov/municipalcode](http://www.brentwoodca.gov/municipalcode) to research references to the Brentwood Municipal Code and search by the code section(s) cited.
- On June 1, 2022, the City Council unanimously voted to direct staff to spend time and resources on updating zoning regulations to limit or prohibit sales of tobacco.
- On September 27, 2022, the City Council unanimously adopted Interim Urgency Ordinance No. 1046 implementing a moratorium on the issuance of any new permit, license, or entitlement for any new tobacco smoke shop.
- On October 25, 2022, the City Council unanimously adopted Interim Urgency Ordinance No. 1050 extending the original interim urgency ordinance for a period of 10 months and 15 days, in accordance with Government Code section 65858(a).

**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:

---

Joel Bryant, Mayor

ATTEST:

---

Margaret Wimberly, MMC  
City Clerk