

ORDINANCE NO. 2016

AN ORDINANCE OF THE CITY OF BURLINGAME AMENDING CHAPTER 8.18 OF THE BURLINGAME MUNICIPAL CODE AND ESTABLISHING A TEMPORARY BAN ON SMOKING IN THE BROADWAY BUSINESS IMPROVEMENT DISTRICT THROUGH DECEMBER 31, 2023; 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 year¹; 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 children²; and

WHEREAS, the California Department of Public Health (“CDPH”) has found that as of 2019, only 6.9% of Californians currently smoke cigarettes³; 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, in 2019, the City Council adopted Ordinance 1970, which prohibited the sale of flavored tobacco products within City limits; and

WHEREAS, the City Council finds it necessary to further regulate smoking within areas of Burlingame with high pedestrian traffic, to protect the 93% of the population who abstain from smoking from secondhand smoke exposure; and

WHEREAS, prior to the proposed implementation at multiple higher pedestrian traffic areas, the City Council finds that it is necessary to first implement a smoking prohibition in one district for limited duration, to better determine how to successfully

¹ 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.

² 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

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

implement a larger, permanent program for other high pedestrian traffic locations in the City; and

WHEREAS, the City Council finds that implementing a temporary smoking prohibition in the Broadway Business Improvement District will provide the necessary data to consider the successful implementation of a permanent smoking prohibition in high pedestrian traffic districts in the City; and

WHEREAS, based upon the recitals above, the City Council finds that the proposed amendments to this Chapter are necessary for the protection of public health, safety and welfare.

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 the proposed Ordinance is in the public interest.

Section 3. The proposed 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 8.18 of the Burlingame Municipal Code is amended as reflected in Exhibit A, attached hereto and incorporated herein by reference. Exhibit A generally 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. This Ordinance and amendments shall expire on December 31, 2023, unless extended by the City Council.

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



Michael Brownrigg, 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 20th day of March 2023 and adopted thereafter at a regular meeting of the City Council held on the 3rd day of April 2023, by the following votes:

AYES: COUNCILMEMBERS: BEACH, BROWNRIGG, COLSON, ORTIZ, STEVENSON
NOES: COUNCILMEMBERS: NONE
ABSENT: COUNCILMEMBERS: NONE



ATTEST:

Meaghan Hassel - Shearer, City Clerk

EXHIBIT A

Chapter 8.18 – Smoking

8.18.010 Findings and purpose.

8.18.020 Definitions.

8.18.030 Smoking limitations in city-owned or city-controlled facilities and vehicles.

8.18.040 Prohibition of smoking in public places.

8.18.050 Regulation of smoking in places of employment.

8.18.055 Multi-family housing.

8.18.060 Where smoking not regulated.

8.18.070 Posting of signs.

8.18.080 Violations.

8.18.090 Nondiscrimination and prohibition on retaliation.

8.18.100 Tobacco vending machines prohibited except in bars.

8.18.110 Enforcement of Labor Code Section 6404.5.

8.18.120 Sale of flavored tobacco products prohibited.

8.18.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

(a) “Bar” means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food in that bar area is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term “bar” shall not include the restaurant’s primary dining area.

(b) “Broadway Pedestrian Retail District” means the area within the Broadway Mixed Use (BRMU) Zoning District, as shown on Figure 1.

(c)(b) “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(d)(e) “Employee” means any person who volunteers his or her services or who is employed by any employer in consideration for direct or indirect monetary wages or profit.

(e)(d) “Employer” means any person, partnership, corporation or nonprofit entity who

employs the services of one or more persons.

(f)(e) “Enclosed” means closed in by roof and at least three (3) walls.

(g)(f) “Multi-family housing” means any structure containing two (2) or more contiguous dwelling units that share a wall, floor, or roof.

(h)(g) “Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, educational, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is a “nonprofit entity” within the meaning of this section.

(i)(h) “Place of employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and class rooms, cafeterias and hallways.

(j)(i) “Public place” means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, rail service establishments, retail stores, theaters and waiting rooms. Public place also means that city-owned or operated property—whether enclosed or open-air—described in Section 8.18.030.

(k)(j) “Restaurant” means any coffee shop, cafeteria, sandwich stand, soda fountain, private or public school cafeteria and any other eating establishment, organization, club, boardinghouse or guest house, which gives or offers food for sale to the public, guests, patrons or employees.

(l)(k) “Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories.

(m)(l) “Service line” means indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money.

(n)(m) “Smoking” means inhaling, exhaling, burning or carrying any lighted pipe, cigar or cigarette of any kind, or any other combustible substance.

(o)(n) “Sports arena” means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, athletic fields, roller and ice rinks, bowling alleys and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events.

(p)(e) “Tobacco vending machine” means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product. (Ord. 1344 § 1, (1987); Ord. 1475 §§ 1, 2, (1993); Ord. 1481 § 1, (1993); Ord. 1901 § 1, (2014); Ord. 1919 § 1, (2015))

8.18.040 Prohibition of smoking in public places.

(a) Smoking shall be prohibited in all enclosed public places, including, but not limited to, the following places:

- (1) Elevators and restrooms;
- (2) Buses, taxicabs and other means of public transit under the authority of the city of Burlingame;
- (3) Service lines;
- (4) Retail stores;
- (5) Restaurants;
- (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, business offices, and banks;
- (7) Public areas of aquariums, libraries and museums when open to the public;
- (8) Any building not open to the sky which is used primarily for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of any such production;
- (9) Enclosed sports arenas;

(10) Doctors offices, dentists offices, waiting rooms, hallways, wards and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics and physical therapy facilities;

(11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;

(12) Lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities;

(13) Lobbies, hallways, and other common areas in multiple-unit commercial facilities;

(14) Polling places;

(15) Warehouse facilities of any size.

(b) In addition to, and not in place of, all other prohibitions in this Chapter and under State and Federal Law, smoking shall also be prohibited in the following open spaces:

(1) Throughout the Broadway Pedestrian Retail District.

FIGURE 1
BROADWAY PEDESTRIAN RETAIL DISTRICT BOUNDARIES

