

**City of Brisbane
Agenda Report**

Date: City Council Meeting of December 8, 2015

To: Mayor and City Council

From: Michael H. Roush, City Attorney
Teresa L. Stricker, Deputy City Attorney

Subject: Smoking Ordinance

CITY COUNCIL GOALS

To promote the general health, safety and welfare of the Brisbane’s residents and visitors and those working in the City.

To consider the needs of individuals who smoke or use electronic cigarettes.

To allow for continued enforcement of the City’s tobacco retailer permit requirements by San Mateo County (“County”) by bringing the City’s requirements into conformity with the County’s parallel permitting requirements.

PURPOSE

The purpose of this item is for the Council consider whether to approve an ordinance regulating smoking and vaporizing (also called “vaping”) of a wide variety of substances, imposing certain restrictions on the sale and distribution of tobacco products including electronic cigarettes, and bringing the City’s existing tobacco retailer permit requirements into conformity with the County’s parallel permitting requirements by extending the City’s requirements to retailers of electronic cigarettes.

RECOMMENDATION

Consider whether to adopt the proposed ordinance.

DISCUSSION

At its meetings on October 15, 2015, November 5, 2015, November 19, 2015, and December 3, 2015, Council considered introducing an ordinance that would impose the following new regulations in Brisbane:

1. Ban smoking of traditional tobacco products and other products, including marijuana, in certain public places and businesses patronized by the public;
2. Ban the use of electronic cigarettes and vaporizing of other substances, including marijuana, in certain public places and businesses patronized by the public;
3. Ban smoking of traditional tobacco products and other products, including marijuana, in common areas and individual units of multi-unit residences;
4. Ban the use of e-cigarettes and vaporizing of other substances, including marijuana, in common areas and individual units of multi-unit residences;
5. *Not* contain an exemption for the smoking of medical marijuana in individual units of a multi-unit residence;
6. *Not* contain an exemption for the vaporizing of medical marijuana in individual units of a multi-unit residence;
7. Impose limited restrictions on the distribution and sale of tobacco products, including e-cigarettes; and
8. Extend the City's existing tobacco retail permit requirements to e-cigarette retailers.

At its special meeting on December 3, 2015, Council introduced the ordinance with several amendments.

- First, concerns were raised that the City should make additional efforts to educate homeowner associations and landlords about any proposed regulations governing smoking or vaporizing in multi-unit residences, and seek further input about those regulations, before introducing an ordinance regulating smoking or vaporizing in multi-unit residences. Accordingly, Council deleted from ordinance proposed new Chapter 8.46 of the Brisbane Municipal Code, the chapter that would have imposed restrictions on smoking and vaporizing in multi-unit residences.
- Second, Council amended proposed new section 8.45.040 of the Brisbane Municipal Code to prohibit smoking or vaporizing at all public transit “shelters” rather than public transit “stops.”

- Third, Council made a clarifying amendment to one of the findings set forth in the ordinance to read as follows: “The United States Fire Administration recommends that if people smoke, they smoke outdoors.”

These amendments are shown in the attached redlined version of the ordinance introduced on December 3, 2015.

Additionally, at the December 3, 2015 meeting, Council passed a motion establishing the Council’s intent to adopt an ordinance in 2016 regulating smoking in multi-unit residences and directing the Health and Safety Committee to work with City staff and County health officials to conduct extensive outreach to multi-unit residence homeowner associations and landlords for the purposes of educating the homeowner associations and landlords about the proposed regulations and obtaining their feedback *before* Council introduces such an ordinance.

Council further indicated that multi-unit smoking and vaporizing regulations the Council currently intends to consider adopting in 2016, after conducting the outreach described above, would (1) contain the same exemption the County adopted that permits smoking and vaporizing of medical marijuana in individual units of multi-unit residences, and (2) delay the effective date on the prohibition against smoking and vaporizing in *existing* units and common areas of multi-unit residences until 6 months, rather than 12 months, after adoption of an ordinance imposing those regulations.

FISCAL IMPACT

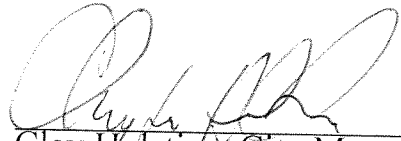
The fiscal impact of the proposed ordinance will be the cost of enforcing the smoking ban and restrictions on the distribution and sale of tobacco products. We understand from the County that most cities within the County that have adopted similar policies have required little by way of enforcement efforts beyond the education stage. The County has offered to take the lead on educating the public about any new smoking or tobacco product policies the City adopts, as the County has done in other jurisdictions.

Additionally, by amending the City’s existing tobacco retailer permitting provision to bring those provisions into conformity with the County tobacco retailer permit requirements, the City will be able to continue having the County enforce the City’s permitting provisions rather than incur the additional expense of having City staff enforce these City requirements.

Accordingly, we conclude that the proposed ordinance would likely have only a slight fiscal impact on the City and impose only minimal burden on the City's police department.



Teresa L. Stricker, Deputy City Attorney



Clay Holstine, City Manager