City of Brisbane
Agenda Report

Date: City Council Meeting of November 5, 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 ("e-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 to determine whether to follow the recommendations of the Health and Safety Committee to introduce an ordinance regulating smoking and vaporizing of a wide variety of substances, imposing certain restrictions on the sale and distribution of tobacco products including e-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 e-cigarettes.

The proposed ordinance, if adopted, would impose a variety of new regulations in Brisbane. First, the proposed ordinance would ban smoking of tobacco products and other products in many public places, places patronized by the public and in common areas and individual units of multi-unit residences. The smoking ban would apply to the use of e-cigarettes, and the smoking and vaporizing of medical marijuana.

Second the proposed ordinance would impose certain restrictions on the distribution and sale of tobacco products, including e-cigarettes.

And third, the proposed ordinance extends the City's existing tobacco retail permit requirements to e-cigarette retailers.

RECOMMENDATION

Consider whether to follow the Committee's recommendation to introduce the proposed ordinance described above.

BACKGROUND

A. Prior Council Consideration and Direction

At its meeting on October 15, 2015, Council considered an earlier draft of the smoking ordinance currently before Council. Attached to this memorandum is a copy of the prior staff report presented to Council on this issue.

At that meeting, Council meeting questions arose about the extent to which the ban on smoking and vaporizing would apply at a variety of City-owned or operated beaches, parks, trails and other outdoor facilities, including the extent to which the ban would apply at the Marina. The Council directed that the Committee consider these issues and make a recommendation to Council.

Additionally, concerns were raised at the October 15, 2015 Council meeting about providing Homeowner Associations with notice of the proposed ban on smoking and vaporizing in multi-unit residences. Council directed to staff to provide notice of the proposed ban to homeowner associations.

Finally, at the October 15, 2015, Council directed the City Attorney to amend the findings set forth in the proposed ordinance to clarify that the extent to which the Council relies on the findings and research set forth in the smoking ordinances adopted by San Mateo County to support the proposed ordinance.

B. Further Committee Recommendations

On October 21, 2015, the Committee met to address a number of issues related to the smoking ordinance. Several members of the public and representatives from San Mateo County attended the Committee meeting.

First, the Committee discussed the extent to which the proposed ban on smoking and vaporizing should apply on *City-owned* beaches, parks, trails and outdoor sports facilities. The Committee concluded that the ban should apply to such areas that are primarily recreational in character. Accordingly, the Committee recommends that the City prohibit smoking and vaporizing at each the following City-owned beaches, parks and outdoor sports facilities:

- Mission Blue Field
- Upper Bicentennial Walkway
- Lower Bicentennial Walkway

- Mono and Klamath Walkway
- Hydrant Park
- Skateboard Park
- Community Center Park site
- Community Park
- Community Pool
- Firth Park
- Silverspot/Tot Lot site
- Dog Park
- Old Quarry Road Park
- Crocker Park Trail
- Mission Blue Tennis Courts
- On the pathway along the Bay Trail shoreline and at the adjoining picnic and recreational areas at the Marina.

The Committee concluded that the smoking and vaping ban should *not* apply at the City-owned beach areas that are not primarily recreational in character, such as Fisherman's Park, Fisherman's Pier and at the piers, gangways and individual slips at the Marina.

Second, the Committee recommends that the smoking and vaporizing ban apply at any City-owned public parking area at the City-owned beaches, parks, trails and sports facilities where the smoking and vaporizing ban applies, except that the Committee recommends that the ban *not* apply at the public parking lots at Sierra Point.

Third, the Committee recommends that the City prohibit smoking and vaporizing at any City-operated or co-sponsored recreational program or recreational activity that takes place on property that is *not* owned by the City. This provision, if adopted, would ban smoking or vaporizing during recreational programs the City operates or co-sponsors on school district outdoor sports facilities. Although the school district policy currently bans smoking and vaporizing on school district property, without this additional provision in the City's ordinance, the City would not be able to enforce the ban school district property.

Fourth, the Committee recommends that the City prohibit smoking and vaporizing at all public transit stops in the City.

Fifth, the Committee recommended that the findings section of the ordinance be amended to include additional research regarding (1) the harmful effects of secondhand tobacco smoke, secondhand e-cigarette aerosol and secondhand marijuana smoke, and (2) the degree to which secondhand smoke particles move from unit to unit in multi-unit residences.

Finally, the Committee recommended that the provision of the ordinance setting forth the ordinance's effective date be amended to clarify that the ban on smoking and vaporizing in *existing* units and common areas of multi-unit residences would not take effect until 12 months after the effective date of the ordinance.

C. Notice Provided to Homeowner Associations and Owners of Multi-Unit Residences

In additional to posting the agenda and agenda materials for the November 5, 2005 in accordance with the notice requirements of the Brown Act, staff has provided the community with the following additional notification that Council will consider at the November 5, 2015 Council meeting an ordinance banning smoking and vaporizing of tobacco and other products, including medical marijuana, in multi-unit residences:

- On October 27, 2015, staff posted notices at the three posting locations the City uses for notices of public hearings. These locations are at City Hall, the Community Center and Mission Blue.

- On October 28, 2015, staff mailed notices to the presidents of the Altamar, Viewpoint and Landmark Homeowner Associations and all owners of multi-unit residences staff was able to identify from County tax records. A sample of that notice is attached to this report.

- Staff plans to post notice that the Council will consider a smoking/vaping ordinance at the November 5th Council meeting on the sign boards located at Community Park and Mission Blue. These notices will be posted by November 2, 2015.

DISCUSSION

A. The Proposed Ordinance as Amended.

Based on the direction given by Council at the October 15, 2015 Council meeting and the subsequent recommendations of the Committee, the version of the proposed ordinance currently before Council has been amended in the following substantive ways from the earlier version of the ordinance Council previously considered:

- As directed by Council, the findings section of the proposed ordinance has been amended to clarify the extent to which Council relies on findings and research set forth in the County's smoking ordinances.

- As recommended by the Committee, additional findings have been added to the ordinance to reflect the additional research forwarded to staff by the County regarding (1) the harmful effects of secondhand tobacco smoke, secondhand e-cigarette aerosol and secondhand marijuana smoke, and (2) the degree to which secondhand smoke particles move from unit to unit in multi-unit residences.

- As recommended by the Committee, Section 8.45.040 has been amended to prohibit smoking and vaporizing at the particular City-owned beaches, parks, trails and other outdoor sports facilities identified above.

- As recommended by the Committee, Section 8.45.040 has been amended to prohibit smoking and vaporizing at public parking areas at each of the beaches, parks, trails and sports facilities where the City bans smoking and vaporizing except at the Marina parking lot.

- As recommended by the Committee, Section 8.45.040 has been amended to prohibit smoking and vaporizing at City-operated or co-sponsored recreational program or recreational activity that takes place on property that is *not* owned by the City.

- As recommended by the Committee, Section 8.45.040 has been amended to ban smoking and vaporizing at all public transit stops in the City.

- As recommended by the Committee, the section of the proposed ordinance setting forth the ordinance's effective date has been amended to clarify that the prohibtion on smoking and vaporizing in *existing* units and common areas of multi-unit residences would not take effect until 12 months after the effective date of the ordinance.

Each of these substantive changes are shown in redline in the version of the proposed ordinance currently before Council.

Additionally, the City Attorney has made additional amendments to the ordinance to address inconsistencies, correct typographical errors or clarify the ordinance. All substantive amendments made by the City Attorney are shown in redline in the proposed ordinance.

Finally, the current version of the proposed ordinance, like the earlier version, shows in redline all proposed amendments to the City's existing tobacco retailer permit provisions. No new amendments have been made to this part of the proposed ordinance.

B. Other Outstanding Issues

1. Medical Marijuana.

As explained in the attached prior staff report, the Committee recommends that Council *not* include in the City's ordinance the provision contained in the County's ordinance that exempts medical marijuana from the ban on smoking and vaporizing in individual units of multi-unit residences. The Committee felt that other non-smoking, non-vaporizing methods of using marijuana (for example, ingesting marijuana in a pill form) are available for users of medical marijuana and that the smoking or vaporizing of marijuana, even for medical use, poses a health risk and a nuisance to others in multi-unit residences.

In the event, however, that the Council wants to adopt an exemption to allow smoking and vaporizing of medical marijuana in individual units of multi-unit residences, the Committee asked the City Attorney to provide the Council with two legislative options in its prior staff report. First, the Committee requested a provision that would establish the same exemption the County adopted. Once again, here is that provision:

Section 8.46.080. Medical Marijuana.

Notwithstanding any other provisions of this Chapter, smoking of marijuana for medical purposes as permitted by California Health and Safety Code sections 11362.7 *et seq.* in any unit of a multi-unit residence is not prohibited by this Chapter. Notwithstanding the forgoing, such use of marijuana may be prohibited or regulated by other provisions of this Code, state law, or federal law.

Second, the Committee requested a provision that would allow individuals with a doctor's note recommending that the individual smoke medical marijuana rather another use marijuana through another non-smoking method based on any enhanced medicinal effects smoking offers that particular individual. Once again, here is that provision:

Section 8.46.080. Medical Marijuana.

Notwithstanding any other provisions of this Chapter, smoking of marijuana for medical purposes as permitted by California Health and Safety Code sections 11362.7 *et seq.* in any unit of a multi-unit residence is not prohibited by this Chapter but only if (1) the individual smoking marijuana for medical purposes has obtained a signed letter from a licensed physician recommending that the individual smoke medical marijuana rather than use medical marijuana in a way that does not involve smoking because of enhanced medical benefits smoking offers the particular individual over non-smoking uses of marijuana, (2) a copy of the doctor's note described in this section has been previously provided to the landlord or that person's designee to the extent the particular unit in which the individual smokes marijuana for medical purposes is subject to a lease or rental agreement, and (3) a copy of the note described in this section is provided to a peace officer upon request. Notwithstanding the foregoing, such use of marijuana may be prohibited or regulated by other provisions of this Code, state law, or federal law.

2. Exemption for Businesses.

As set forth in the attached prior staff report, the Committee previously asked staff to find out more information about why the County included in its ordinance a provision allowing businesses to request an exemption from aspects of the County's smoking and vaporizing ban, and how often the County has granted an exemption. The Committee asked staff to report on this issue to the full Council.

Based on staff's conversations with the County, it is unclear exactly why the County included this provision in its ordinance. And, according to the County, no business has ever applied for the exemption.

The proposed ordinance currently before Council, like the County ordinance, includes a provision allowing businesses to request an exemption from the ban on smoking and vaporizing. Under the proposed ordinance, the exemption would *not* apply to the ban on smoking and vaporizing in multi-unit residences.

FISCAL IMPACT

As explained in the attached prior staff report, 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

Attachments:
Staff Report Regarding Smoking Ordinance, prepared for the October 15, 2015 Council Meeting
Sample October 28, 2015 notice to homeowner associations and owners of multi-unit residences

CITY OF BRISBANE

50 Park Place
Brisbane, California 94005-1310
(415) 508-2100
Fax (415) 467-4989

COPY

October 27, 2015

Dear Property Owner,

At the City Council Meeting on Thursday, November 5, 2015, the City Council will be discussing the possible future adoption of an ordinance prohibiting smoking of tobacco and other products in individual units and common areas of multi-unit residences, as well as certain public places, and businesses patronized by the public. The proposed ban would extend to the use of electronic cigarettes and to the smoking and vaporizing of medical marijuana. The meeting will be held at 50 Park Place and will begin at 7:30 p.m.

Information on the proposed Ordinance will be available on the City's website on Friday, October 30th at www.brisbane.ca.org or by calling 415-508-2113.

Sincerely,

Sheri Marie Spediacci
City Clerk

Providing Quality Services

ORDINANCE NO. 602

AN ORDINANCE OF THE CITY OF BRISBANE (1) ENACTING CHAPTERS 8.45 AND 8.46 OF THE BRISBANE MUNICIPAL CODE TO PROHIBIT SMOKING OF TOBACCO PRODUCTS AND OTHER PRODUCTS, INCLUDING USE OF ELECTRONIC CIGARETTES AND SMOKING AND VAPORIZING OF MEDICAL MARIJUANA, IN PUBLIC PLACES, BUSINESSES PATRONIZED BY THE PUBLIC AND MULTI-UNIT RESIDENCES, AND TO IMPOSE CERTAIN RESTRICTIONS ON THE DISTRIBUTION AND SALE OF TOBACCO PRODUCTS AND E-CIGARETTES; AND (2) AMENDING CHAPTER 8.44 OF THE BRISBANE MUNICIPAL CODE TO EXTEND THE CITY'S EXISTING TOBACCO RETAIL PERMIT REQUIREMENTS TO ELECTRONIC CIGARETTE RETAILERS.

WHEREAS, the Council has reviewed the findings that San Mateo County made to support the County's smoking, vaporizing and tobacco-related regulations; and

WHEREAS, the Council finds it appropriate to rely on the research and facts set forth in the County's findings to support smoking, e-cigarette and tobacco-related regulations in the City of Brisbane, and on that basis, the Council makes the findings set forth below:

- Tobacco use causes death and disease and continues to be an urgent public health threat, as evidenced by the following:
    - Tobacco-related illness is the leading cause of preventable death in the United States, accounting for about 443,000 deaths each year; and
    - Scientific studies have concluded that tobacco use can cause chronic lung disease, coronary heart disease, and stroke, in addition to cancer of the lungs, larynx, esophagus, and mouth; and
    - Some of the most common types of cancers, including stomach, liver, uterine, cervix, and kidney cancers, are related

to tobacco use; and

- Secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:
    - The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke; and
    - The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and
    - The California Environmental Protection Agency included secondhand tobacco smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm; and
- Exposure to secondhand tobacco smoke causes death and disease, as evidenced by the following:
    - Secondhand smoke is responsible for as many as 73,000 deaths among nonsmokers each year in the United States; and
    - Exposure to secondhand smoke increases the risk of coronary heart disease by approximately thirty percent; and
    - Secondhand smoke exposure causes lower respiratory tract infections, such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year; and exacerbates childhood asthma; and

- Tobacco use and exposure to secondhand tobacco smoke impose great economic costs, as evidenced by the following:
    - The total annual economic burden of smoking in the United States is $193 billion; and
    - From 2001-2004, the average annual health care expenditures attributable to smoking were approximately $96 billion; and
    - The medical and other costs to nonsmokers due to exposure to secondhand smoke were estimated at over $10 billion per year in the United States in 2005; and
    - The total annual cost of smoking in California was estimated at $475 per resident or $3,331 per smoker per year, for a total of nearly $15.8 billion in smoking- related costs in 1999 alone; and
    - California's Tobacco Control Program saved the state and its residents $86 billion in health care expenditures between the year of its inception, 1989, and 2004, with savings growing yearly; and
- Smoking is the primary cause of fire-related injuries and deaths in the home, as evidenced by the following:
    - Cigarettes, cigars, pipes and other smoking materials are the leading cause of fire deaths in the United States, causing an estimated 142,900 smoking-related fires, 780 deaths, 1,600 injuries, and $606 million in direct property damage in 2006; and
    - One in four fatalities from home fires caused by smoking is NOT the smoker whose cigarette started the fire, and 25% of those deaths were of neighbors or friends of the smoker; and

- Smoking in a residence where long-term oxygen therapy takes place is very dangerous as oxygen is a fire accelerant, and 27% of fatalities due to smoking during long-term oxygen therapy occurred in multifamily dwellings; and

- The United States Fire Administration recommends that people smoke outdoors; and

- Nonsmokers who live in multi-unit dwellings can be exposed to neighbors' secondhand smoke, as evidenced by the following:

  - Secondhand smoke can seep under doorways and through wall cracks; and

  - Persons living in apartments near smokers can be exposed to elevated pollution levels for 24 hours a day, and at times, the particulate matter exposure can exceed the U.S. Environmental Protection Agency's 24-Hour Health Based Standard; and

  - The Surgeon General has concluded that eliminating smoking in indoor spaces is the only way to fully protect nonsmokers from secondhand smoke exposure and that separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot completely prevent secondhand smoke exposure; and

- Most Californians do not smoke and a majority favor limitations on smoking in multi-unit residences, as evidenced by the following:

  - Nearly 87% of Californians and 91% of California women are nonsmokers; and

  - 74% of Californians surveyed approve of apartment complexes requiring at least half of rental units be nonsmoking; and

- 69% of Californians surveyed favor limiting smoking in outdoor common areas of apartment buildings and 78% support laws that create nonsmoking units; and

- 62% of California renters feel that there is a need for laws to limit smoking in apartments; and

- In 2013, Breathe California, Youth Leadership Institute and the Sunset Tobacco Education Project conducted a survey with over 400 people in San Mateo County that showed that 100% of tenants believe secondhand smoke is harmful and 95% would be bothered by the smell of tobacco in their apartments. Residents throughout San Mateo County were overwhelmingly (75-79%) in support of smoke-free multi-unit housing policies; and

- The use of electronic smoking devices is a recent trend that is proliferating in California, including in Brisbane. This trend is exposing the public to secondhand electronic smoking device vapors which have not been scientifically proven as safe; and

- Electronic smoking devices, commonly referred to as "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," are electronic devices often made to look like conventional tobacco products in shape, size and color; and

- Electronic smoking devices are designed to be used in the same manner as conventional tobacco products with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

- A study published in the Journal of Environment and Public Health suggests that electronic smoking devices "may have the capacity to

're-normalize' tobacco use in a demographic that has had significant de-normalization of tobacco use previously"; and

- Nicotine is a highly addictive neurotoxin and is included in the Proposition 65 list of Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. Nicotine is known to cause birth defects and is particularly dangerous for vulnerable populations including children, pregnant women and people with cardiovascular conditions; and

- A recent scientific study confirmed that electronic smoking devices that contain nicotine also emit nicotine in the released vapor and involuntarily expose nonsmokers to nicotine; and

- The United States Food and Drug Administration (the "FDA") conducted laboratory analysis of electronic cigarette samples and found they contained carcinogens and toxic chemicals to which users and bystanders could potentially be exposed; and

- A study published in the American Journal of Public Health found similar results to those identified in FDA testing and concluded that the electronic smoking devices tested demonstrated poor quality control, toxic contaminants, misrepresentation of the nicotine delivered and insufficient evidence of the overall public health benefit; and

- A recent study found a total of 22 elements in vapors produced by electronic smoking devices, and three of these elements (lead, nickel, and chromium) appear on the FDA's "Harmful and Potentially Harmful Chemicals List"; and

- Manufacturers of electronic smoking devices have not submitted clinical studies about the safety and efficacy of these products to the FDA; and, therefore, consumers currently have no way of knowing

what types or concentrations of potentially harmful chemicals they are inhaling and exhaling when they use these products; and

- The City is supportive of tobacco cessation programs and modalities that have proven efficacy and utilize safe FDA-approved products, but to date, electronic smoking devices are not an FDA-approved smoking cessation device; and

- The World Medical Association has determined that electronic smoking devices "are not comparable to scientifically-proven methods of smoking cessation" and that "neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established; and

- The confusion caused by the visual similarity between electronic smoking devices and traditional tobacco products may impact individuals and the owners of establishments seeking to comply with applicable smoke-free laws and will threaten the city's enforcement of these laws; and

- The use of electronic smoking devices in smoke-free locations threatens to reverse the progress that has been made in establishing the social norm that smoking is not permissible in public places or places of employment; and

- The use of electronic smoking devices in smoke-free locations may increase the social acceptability and appeal of smoking, particularly for youth, undermining the progress that has been made over the years in discouraging smoking; and

- Prohibiting the use of electronic smoking devices in smoke-free locations will protect traditionally smoke-free locations such as daycare

centers, schools, libraries, public parks, playgrounds and beaches and will prevent people, including children, from involuntarily inhaling nicotine and potentially harmful chemicals scientifically proven to exist in the secondhand vapor of electronic smoking devices; and

WHEREAS, the FDA identifies 93 chemicals and chemical compounds found in tobacco products and tobacco smoke as a harmful or potentially harmful carcinogens, respiratory toxicants, cardiovascular toxicants and/or reproductive or developmental toxicants; and

WHEREAS, according to the Centers for Disease Control and Prevention, tobacco smoke contains "a deadline mix of more than 7,000 chemicals," including hundreds of toxic chemicals such as formaldehyde, benzene, polonium 210, vinyl chloride, chromium, arsenic, lead, cadmium, carbon monoxide, hydrogen cyanide, ammonia, butane and toluene; and.

WHEREAS, recent studies show that the aerosol emitted by electronic cigarettes contains 10 chemicals listed on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects and reproductive harm; and

WHEREAS, recent studies also show that the aerosol emitted by electronic cigarettes contains ultrafine particles that are inhaled and trapped in the lungs, absorbed by the blood stream and delivered to the brain and other organs; and

WHEREAS, secondhand marijuana smoke has been identified as a health hazard, as evidenced by the following:

- The California EPA included marijuana smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer; and
- According to a 2009 California EPA study, marijuana smoke contains at least 33 known carcinogens and is associated with cancers of the lung, head and neck, bladder, brain, and testes; and

- Based on the similar chemical composition of marijuana secondhand smoke and tobacco secondhand smoke, the well-established heart attack risk caused by exposure to tobacco secondhand smoke, and research demonstrating the negative effects of marijuana secondhand smoke on cardiovascular functions, a 2015 UCSF Division of Cardiology & Cardiovascular Research Institute report concluded that marijuana secondhand smoke and tobacco secondhand smoke likely have similar harmful effects on public health; and

WHEREAS, the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) recommends that multi-unit housing be free from environmental tobacco smoke, marijuana smoke, and electronic smoking devices' aerosol; and

WHEREAS, a 2011 pilot air quality study in Los Angeles County reported that "tobacco smoke particles move from unit to unit [in multi-unit residential buildings] through cracks in fixtures, electrical outlets, pipes, vents, and baseboards, as well as through ventilation systems and windows," and Neil Klepeis, the scientist who conducted the study, estimates that "as much as 30 to 50 percent of the air in a residential building may come from other units, regardless of whether the buildings are new or old," and that "[t]obacco smoke particles in units of non-smokers can reach significant levels equal to and exceeding those of a smoky bar or casino"; and

WHEREAS, a local ordinance that authorizes residential rental agreements to include a prohibition on smoking of tobacco products within rental units is not prohibited by California law; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, California law prohibits smoking in virtually all indoor places of employment reflecting the state policy to protect against the dangers of exposure to secondhand smoke; and

WHEREAS, California law declares that anything that is injurious to health or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance; and

WHEREAS, local governments have broad latitude to declare nuisances and are not constrained by prior definitions of nuisance; and

WHEREAS, this ordinance is adopted (1) to protect the public health and welfare by prohibiting or limiting smoking in public places and businesses patronized by the public, (2) to promote smoke-free environments by diminishing ease of accessibility to tobacco and tobacco-related products, through vending machine and self-service sales of these products, (3) to reduce the initiation and maintenance of tobacco use, especially by minors, by prohibiting the distribution and sale of tobacco and tobacco-related products through vending machines, self-service displays and out-of-package sales (3) to protect the public health, safety, and welfare of lawful occupants of multi-unit residences by discouraging the inherently dangerous behavior of smoking around non-smokers and decreasing the nonconsensual exposure of secondhand smoke to the public in and around their homes; (3) to protect children from inhaling secondhand smoke and from choking or ingesting butts or other toxic tobacco litter where children live and play; and (4) to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air has priority; and

WHEREAS, to protect the health, welfare and safety of City residents and visitors by protecting them from exposure to the secondhand byproducts of electronic smoking devices, facilitating uniform enforcement of smoke-free air laws, reducing the potential for re-normalizing smoking where tobacco use is prohibited, and protecting youth from observing behavior that could encourage them to smoke, the Council has decided to legislatively prohibit the use and sale of electronic smoking devices in all areas where the smoking or sale of tobacco products are prohibited; and

WHEREAS, this ordinance is exempt from the requirements of the California

Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, as it is not a "project" as it has no potential to result in a direct or reasonably foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a)). Further, the ordinance is exempt from CEQA as there is no possibility that the ordinance or its implementation would have a significant negative effect on the environment. (14 Cal. Code Regs. § 15061(b)(3)). The ordinance is also categorically exempt because it is an action taken by a regulatory agency to assume the maintenance, restoration, enhancement or protection of the environment. (14 Cal. Code Regs. § 15308). The Director of Community Development shall cause a Notice of Exemption to be filed as authorized by CEQA and the CEQA guidelines.

THE CITY COUNCIL OF BRISBANE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Chapter 8.45 is enacted and added to Title 8 of the Municipal Code as follows:

CHAPTER 8.45 SMOKING IN PUBLIC PLACES AND BUSINESSES PATRONIZED BY THE PUBLIC; DISTRIBUTION AND SALE OF TOBACCO PRODUCTS

Section 8.45.010 - Application of Chapter; Declaration of nuisance.

(a) This Chapter shall apply in every location within the geographical limits of the city and to structures owned or leased by the City, wherever located.

(b) Smoke produced in violation of this Chapter or state law is a nuisance.

Section 8.45.020 - Purposes and policies.

This Chapter shall be construed and applied to promote its basic purposes and policies which are:

(a) To protect the public health and welfare by prohibiting or limiting smoking in public places and places of employment, as hereinafter set forth.

(b) To strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air should have priority.

(c) To promote smoke-free environments by diminishing ease of accessibility to tobacco and tobacco-related products through vending machine sales of tobacco and tobacco-related products.

(d) To reduce the initiation and maintenance of tobacco use, especially by minors, by prohibiting the distribution and sale of tobacco products through vending machines and self-service displays, and the out-of-package sales of those products.

Section 8.45.030 - Definitions.

For the purpose of this Chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section.

(a) "Enclosed" means closed in by a roof and four (4) walls with appropriate openings for ingress and egress. For purposes of this Chapter, a city-owned multilayer parking structure shall be considered an enclosed structure.

(b) "Landlord" means any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that landlord does not include sublessors.

(c) "Public place" means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place.

(d) "Roadway" means that portion of the public right-of-way designed and ordinarily used for motor vehicle travel. "Roadway" does not include sidewalks, curbs, driveways, medians, or other areas adjacent to public streets.

(e) "Self-service display" means an open display of tobacco products that the public has access to without the intervention or assistance of an employee.

(f) "Smoke" (noun) means any vapors, gases, particles or other by-products released as a result of combustion or electrical ignition, when the apparent or usual purpose of the combustion or electrical ignition is human inhalation of the byproducts, except when the combusting or igniting material both contains no tobacco or nicotine and the usual purpose of inhalation is solely olfactory such as with the burning of incense. Smoke does not include combustion of substances regulated by the United States Food and Drug Administration and used for medical or therapeutic purposes. Smoke specifically includes but is not limited to gases, particles, vapors or other by-products released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of

cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or other by-products released as a result of combustion or ignition.

(g) "Smoking" or to "smoke" (verb) means possessing a lighted or ignited tobacco or nicotine product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, or cigarette of any kind including but not limited to an electronic cigarette); or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind including but not limited to an electronic cigarette.

(h) "Tobacco," "tobacco product," "tobacco or smoking product," or "tobacco or nicotine product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco which can be used for smoking, chewing, inhalation or other means of ingestion; and any electronic cigarette or other electronic device used to generate smoke; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(i) "Vendor assisted" means that only a store employee has access to the tobacco product and assists the customer by supplying the product.

Section 8.45.040 - Areas where smoking is prohibited.

Smoking shall be prohibited at each of the following locations:

(a) Within any enclosed structure owned or leased by the City wherever located except private residences leased from the City, which are governed by the provisions of Chapter 8.46; and within thirty (30) feet in any direction from any enclosed structure owned by the City, as determined by the Director of Public Works, up to the edge of City property except areas that are less than thirty (30) feet from the enclosed structure that lie within a public roadway.

(b) Within all enclosed areas available to, and customarily used by, the general public, in all businesses patronized by the public and all enclosed passageways between businesses.

(c) ~~Within any area, including public parking areas, of~~ At the following City-owned~~, operated or maintained~~ beaches, parks, trails and outdoor sports facilities ~~and~~

~~trails, including but not limited to the following~~: Mission Blue Field, ~~Crocker Entrance, Fisherman's Park,~~ Upper Bicentennial Walkway, Lower Bicentennial Walkway, Mono and Klamath Walkway, Hydrant Park, Skateboard Park, Community Center Park site, Community Park, Community Pool, Firth Park, Silverspot/Tot Lot site, Dog Park, Old Quarry ~~Rd.~~Road Park, Crocker Park Trail, Mission Blue Tennis Courts, and at the Marina on the Bay Trail pathway along the shoreline and at the adjoining picnic and recreational areas.

(d) At any City-owned public parking area at any of the beaches, parks, trails and sports fields set forth in subsection (c) above except that smoking is not prohibited at the public parking lots at Sierra Point.

(e) At any City-operated or co-sponsored recreational program or recreational activity that takes place on property that is not owned by the City.

(f) At all public transit stops.

Section 8.45.050 - Buildings.

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters not less than one inch (1″) in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be conspicuously posted in every room, building or other place where smoking is regulated by this Chapter, by the owner, operator, manager or other person having control of such building or other place.

Section 8.45.060 - Owners, operators, employees.

Any owner, manager, operator, or employee of any establishment controlled by this ordinance shall have the right to inform persons violating this Chapter of the requirements of the provisions being violated and the consequences of such violation.

Section 8.45.070 - Owners must comply.

It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this Chapter to fail to comply with its provisions. Any landlord who has properly posted signs in accordance with this Chapter will be deemed to be in compliance with this Chapter.

Section 8.45.080 - Persons who smoke must comply.

It shall be unlawful for any person to smoke in any area restricted by the provisions of this Chapter.

Section 8.45.090 – Penalties.

(a) Any person who violates any provision of this ordinance shall be guilty of an infraction, punishable by:

(1) A fine not exceeding one hundred dollars ($100) for a first violation.

(2) A fine not exceeding two hundred dollars ($200) for a second violation.

(3) A fine not exceeding five hundred dollars ($500.00) for each additional violation within one (1) year.

(b) Misdemeanors. Any person who violates any provision of this Chapter in excess of three times within one year, shall be guilty of a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1 .14, 1.16 and 1.18 of this code.

(c) Each day that a violation of this Chapter continues shall constitute a separate violation of this Chapter.

(d) The remedies provided for by this Chapter are not intended to preclude or in otherwise limit any other remedy available by law or equity.

Section 8.45.100 - No retaliation.

No person shall retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by the ordinance.

Section 8.45.110 - Sections found invalid.

If any provision, clause, section, sentence or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, such validity shall not affect the other provisions of this Chapter that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

Section 8.45.120. Restrictions set by other applicable laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable Chapter of this code or other law or regulation.

Section 8.45.130 - Exemptions.

Any owner or manager of a business or establishment subject to this Chapter may apply to the City Manager or the City Manager's designee for an exemption or modification to any provision of this Chapter due to unusual circumstances or conditions.

(a) Such exemption shall be granted only if the City Manager or the City Manager's designee finds from the evidence presented by the applicant for exemption that due to such unusual circumstances or conditions it would cause a substantial impairment of the function of the establishment or business to carry out some or all of the provisions of this Chapter.

(b) The applicant for an exemption shall pay the fee prescribed by the City Manager or the City's Manager's designee to cover the cost of the hearing and noticing of hearing.

Section 8.45.140 - Sale of tobacco products in City-owned and leased buildings.

Cigarette vending machines and the sale of tobacco products and accessories are prohibited in City-owned structures and in those areas of other structures leased by the City, wherever located.

Section 8.45.150 - Distribution of free samples and coupons.

No person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute, or direct, authorize or permit any agent or employee to distribute to any person on any public street or sidewalk or in any public park or playground or on any other public place (1) any cigarette or other tobacco or smoking product without charge, or (2) coupons, certificates, or other written material that may be redeemed for tobacco products without charge.

Section 8.45.160 - Out of package sales.

No person shall sell or offer for sale cigarettes or other tobacco products not in the original packaging provided by the manufacturer.

Section 8.45.170 - Vending machine sales prohibited.

No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or appliance, or any other device designed or used for vending purposes.

Section 8.45.180 – Self-service displays prohibited.

No person, firm, association or corporation shall sell, permit to be sold or offer for sale any tobacco product by means of self-service displays, or by any means other than vendor assisted sales.

SECTION 3: Chapter 8.46 is enacted and added to Title 8 of the Municipal Code as follows:

CHAPTER 8.46 SMOKING IN MULTI-UNIT RESIDENCES

Section 8.46.010. - Application of Chapter; Declaration of Nuisance.

(a) The provisions of this Chapter shall apply to all multi-unit residences within the city limits and to all multi-unit residences owned or leased by the city, wherever located.

(b) Smoke produced in violation of this Chapter or state law is a nuisance, and the uninvited presence of such smoke on property is a nuisance and a trespass.

Section 8.46.020. - Definitions.

For the purposes of this Chapter, the following definitions shall govern unless the context clearly requires otherwise:

(a) "Common area" means every enclosed area or unenclosed area of a multi-unit residence accessible and usable by residents of different units including, but not limited to, halls and paths, lobbies, courtyards, elevators and stairs, community rooms, playground areas, gym facilities, swimming pool areas, parking garages and parking lots, shared restrooms, shared laundry rooms, shared cooking areas, and shared eating areas.

(b) "Common interest development" means a development as defined in California Civil Code Section 4100 *et seq*. or successor statute, as said provisions may be amended or succeeded, which includes a "condominium project," a "community apartment project," a "stock cooperative," and a "planned development" and also includes a townhouse.

(c) "Enclosed area" means:

1) Any full or partially covered area having more than fifty percent (50%) of its perimeter walled or otherwise closed to the outside with appropriate

openings for ingress or egress ventilation, or

2) Any space open to the sky having more than seventy-five (75%) of its perimeter walled in or otherwise closed to the outdoors.

(d) "Existing unit" means any unit that is not a new unit, including any associated exclusive-use enclosed or unenclosed areas.

(e) "Landlord" means any person who owns property let for residential use, any person who lets residential property, and any person who manages such property, except that "landlord" does not include a master tenant who sublets a unit as long as the master tenant sublets only a single unit of a multi-unit residence.

(f) "Multi-unit residence" or "multi-family dwelling" means residential property containing two or more units with one or more shared or abutting walls, floors, ceilings or shared ventilation systems including, but not limited to, a common interest development, condominium, townhouse, duplex, triplex, and apartment or other rental complex. A multi-unit residence does not include property owned by the state or federal government or the following specifically excluded types of housing:

1) A hotel or motel that meets the requirements set forth in California Civil Code section 1940 (b)(2);

2) A residential care facility or assisted living facility governed by federal or state community care licensing regulations;

3) A detached, single-family residence; and/or

4) A detached, single-family home with a detached or attached in-law or second unit when permitted pursuant to Government Code sections 65852.1, 65852.150, 65852.2 or an ordinance of the city adopted pursuant to those sections.

(g) "New unit" means a unit that is issued a certificate of occupancy more than 180 days after the effective date of this ordinance and also means a unit that is let for residential use for the first time more than 180 days after the effective date of this ordinance.

(h) "Nonsmoking area" means any enclosed area or unenclosed area of a multi-unit residence in which smoking is prohibited by: (1) this Chapter or other law; (2) by binding agreement relating to the ownership, occupancy, or use of real property; or (3) by designation of a person with legal control over the area.

(i) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity, including government agencies.

(j) "Rental" complex means a property for which 50 percent or more of units are let by or on behalf of the same landlord.

(k) "Smoke" (noun) means any vapors, gases, particles or other by-products released as a result of combustion or electrical ignition, when the apparent or usual purpose of the combustion or electrical ignition is human inhalation of the byproducts, except when the combusting or igniting material both contains no tobacco or nicotine and the usual purpose of inhalation is solely olfactory such as with the burning of incense. Smoke does not include combustion of substances regulated by the United States Food & Drug Administration and used for medical or therapeutic purposes. Smoke specifically includes but is not limited to gases, particles, vapors or other by-products released by electronic cigarettes, tobacco cigarettes, herbal cigarettes, marijuana cigarettes and any other type of cigarette, pipe or other implement for the purpose of inhalation of vapors, gases, particles or other by-products released as a result of combustion or ignition.

(l) "Smoking" or "to smoke" (verb) means possessing a lighted or ignited tobacco or nicotine product or paraphernalia; or engaging in an act that generates smoke (including, but not limited to, possessing a lighted or ignited pipe, hookah pipe, cigar, or cigarette of any kind including but not limited to an electronic cigarette); or lighting or igniting a pipe, a hookah pipe, a cigar, or a cigarette of any kind including but not limited to an electronic cigarette.

(m) "Tobacco or Nicotine Product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette or other electronic device used to generate smoke;

and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(n) "Unenclosed area" means any area that is not an enclosed area. ~~Unenclosed areas include balconies, porches, decks and patios.~~

(o) "Unit" means a personal dwelling space for one or more persons, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio.

Section 8.46.030. - Smoking prohibited in units and common areas except designated smoking areas.

(a) Smoking is prohibited in all units and in any unenclosed and enclosed common area or any other area, of a multi-family dwelling or multi-unit residence, and within thirty feet (30) of any operable doorway, window, opening, or ventilation system, except that a person with legal control over a common area, or authorized representative of such person, may designate a portion of the common area as a designated smoking area provided that at all times the designated smoking area complies with subsection (b) below.

(b) A designated smoking area:

1) Shall be an unenclosed and clearly delineated area, as described in this subsection (b).

2) Shall be located at least 30 feet in any direction from any operable doorway, window, opening or other vent into an enclosed area that is located at a multi-unit residence and is a nonsmoking area;

3) Shall have a clearly marked perimeter and be identified by conspicuous signs;

4) Shall have receptacles designed for and primarily used for disposal of tobacco waste and shall be maintained free of tobacco related litter including

but not limited to cigarette butts;

5) Shall not include, and shall be at least 30 feet from, unenclosed areas primarily used by children and unenclosed areas with improvements that facilitate physical activity including playgrounds, swimming pools, and school campuses.

(c) No person with legal control over a common or other area in which smoking is prohibited by this Chapter or other law shall knowingly permit the presence of ash trays, ash cans, or other receptacles designed for or primarily used for disposal of smoking waste within the area. Such person with legal control over a common or other area in which smoking is prohibited by this Chapter or other law shall maintain such area free of tobacco litter or waste.

Section 8.46.040. - Smoking prohibited in new and existing units and common areas of multi-unit residences.

(a) Smoking is prohibited and no person shall smoke in any new unit or common area of a multi-unit residence, except in a designated smoking area as provided herein.

(b) Beginning 12 months after the effective date of this ordinance, smoking is prohibited and no person shall smoke in any existing unit or common area of a multi-unit residence, except in a designated smoking area as provided herein.

Section 8.46.050. - Additional smoking-related prohibitions.

(a) No person shall smoke in any nonsmoking area.

(b) No person with legal control over any nonsmoking area, or authorized representative of such person, shall knowingly permit smoking in any nonsmoking area that is under the person's control. The person with legal control of the nonsmoking areas, or authorized representative of such person, shall keep the area free of any tobacco litter or waste.

(c) No person shall intimidate or harass any person who seeks compliance with this Chapter. Moreover, no person shall intentionally or recklessly expose another person to smoke in response to that person's effort to achieve compliance with this Chapter. Violation of this subsection shall constitute a misdemeanor.

(d) Causing, permitting, aiding, or abetting a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

Section 8.46.060. - Required signage.

"No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted on the outside of each enclosed building or unenclosed area where smoking is prohibited by this Chapter or other law, but are not required inside any unit of a multi-unit residence. Such signs shall be maintained by the person or persons with legal control over the common areas or the authorized representatives of such person. The absence of signs shall not be a defense to a violation of any provision of this Chapter.

Section 8.46.070. - Required and implied lease terms for all new and existing units in multi-unit residences.

(a) Every lease or other rental agreement for the occupancy of a new unit or existing unit in a multi-unit residence entered into, renewed, or continued month-to-month after the effective date of this ordinance shall include the following:

1) A clause providing in substance that it is a material breach of the agreement for the tenant, or any other person subject to the control of the tenant or present by invitation or permission of the tenant, to (i) smoke in any common area of the property other than a designated smoking area, (ii) smoke in a new unit, (iii) smoke in an existing unit 12 months or more after the effective date of this ordinance, or (iv) violate any law regulating smoking anywhere on the property.

2) A clear description of all areas on the property where smoking is allowed or prohibited.

3) A clause expressly conveying third-party beneficiary status to all tenants and lawful occupants of the multi-unit residence as to the smoking provisions of the agreement.

(b) Whether or not a landlord complies with subsection (a) above, the clauses required by that subsection shall be implied and incorporated by law into every

agreement to which subsection (a) applies and shall become effective as of the earliest possible date on which the landlord could have made the insertions pursuant to subsection (a).

(c) This Chapter shall not create liability in a landlord or property manager to any person for a tenant's breach of any smoking provision in a lease or other rental agreement for the occupancy of a unit in a multi-unit residence if the landlord has fully complied with subsection (a) of this section.

(d) Failure to enforce any smoking provision required by this Chapter shall not affect the right to enforce such provision in the future, nor shall a waiver of any breach constitute a waiver of any subsequent breach or a waiver of the provision itself.

Section 8.46.080. - Penalties.

(a) Infractions. Any person who violates any provision of this Chapter shall be guilty of an infraction, punishable as follows:

1) A fine not exceeding $100.00 for a first violation.

2) A fine not exceeding $200.00 for a second violation.

3) A fine not exceeding $500.00 for each additional violation within one year.

(b) Misdemeanors. Any person who violates any provision of this Chapter in excess of three times within one year, shall be guilty of a misdemeanor. Any single violation of subsection 8.46.050(c) shall constitute a misdemeanor, as set forth in that subsection.

(c) Each day that a violation of this Chapter continues shall constitute a separate violation of this Chapter.

(d) The remedies provided for by this Chapter are not intended to preclude or otherwise limit any other remedy available by law or equity.

Section 8.46.090. - Interpretation.

(a) The provisions of this Chapter are restrictive only. This Chapter establishes no new rights for a person who engages in smoking and shall in no way limit the application of Chapter 8.45 of this Code. Notwithstanding (i) any provision of this Chapter or other provisions of this Code, (ii) any failure by any person to restrict smoking under this Chapter, or (iii) any explicit or implicit provision of this Code that allows smoking in any place, nothing in this Code shall be interpreted to limit any person's legal rights under other laws with regard to smoking, including, for example, rights in nuisance, trespass, property damage, and personal injury or other legal or equitable principles. This Chapter is intended and shall be interpreted to be consistent with and at least as stringent as any state statute prohibiting smoking in any unit, common area or other area of a new or existing multi-family dwelling, or any other place.

(b) If any provision of this Chapter or the application thereof is held to be preempted, unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect any other provision of this Chapter that is not specifically included in such ruling or that can be given effect without the preempted, unconstitutional, or invalid provision or application; and to this end, the provisions of this Chapter are declared severable.

SECTION 4: Chapter 8.44 of Title 8 of the Municipal Code is amended as follows:

Section 8.44.010. - Requirement for a permit; definition of "tobacco" and "tobacco products.".

(a) It shall be unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from the environmental health division of the San Mateo County department of health (the "environmental health division") for each location where such sales are conducted. Permits are valid for one year and shall be renewed annually.

(b) As used in this Chapter, the terms "tobacco" and "tobacco products" shall be defined as set forth by subsection (h) of section 8.45.030 of Chapter 8.45 of this Code.

SECTION 5. This Ordinance shall be in full force and effect thirty days after its passage and adoption. As set forth in Section 8.46.040 above, the prohibition on smoking in existing units and common areas of multi-unit residences shall not take effect until 12 months after the effective date of this Ordinance.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2015, by the following vote:

AYES:
NOES:

ABSENT:
ABSTAIN:

_____
Terry O'Connell, Mayor

ATTEST:

_____
Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

_____
Teresa L. Stricker, Deputy City Attorney