

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

AN ORDINANCE AMENDING
CHAPTER 6.14 (LICENSING OF
TOBACCO SELLERS) AND CHAPTER
6.18 (SMOKING POLLUTION
CONTROL AND HEALTH
PROTECTION REGULATIONS) OF
THE FORT BRAGG MUNICIPAL CODE
TO MODIFY TOBACCO RETAILER
LICENSING REGULATIONS AND
SMOKING PROHIBITIONS TO
INCLUDE ELECTRONIC SMOKING
DEVICES

ORDINANCE NO. ____-2016

WHEREAS, the hazards related to exposure to secondhand smoke are well documented and scientifically supported to be detrimental to human health even in the open air; and

WHEREAS, the US Surgeon General warns that there is no risk-free level of exposure to secondhand smoke; and

WHEREAS, Governor Jerry Brown signed SB7 into law effectively raising the legal age permitting the use of tobacco and tobacco related products from 18 to 21 effective June 9, 2016; and

WHEREAS, Governor Jerry Brown signed SB5 into law effectively including electronic devices, such as electronic cigarettes, that deliver nicotine or other vaporized liquids under the “tobacco” and “tobacco products” definitions; and

WHEREAS, laws restricting the use of electronic smoking devices have benefits to the public as evidenced by the following:

- Research has found at least ten chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, such as formaldehyde, acetaldehyde, lead, nickel, and toluene associated with electronic smoking devices; and
- More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or second hand vaping; and
- The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, the State of California’s Tobacco Education and Research Oversight Committee “opposes the use of e-cigarettes in all areas where other tobacco products are banned;” and

WHEREAS, in order to protect the public health, the City Council of the City of Fort Bragg desires to amend its existing ordinances addressing tobacco licensing, sales, and use to include the licensing, sales and use of electronic smoking devices;

NOW, THEREFORE, the City Council of the City of Fort Bragg ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. Numerous studies have established that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in nonsmokers.
2. Numerous studies have established electronic smoking devices are designed to be used in the similar manner to conventional lighted tobacco products with the user exhaling a smoke-like aerosol that mimics the exhaled smoke from lighted conventional tobacco products. Because electronic smoking devices may contain (and thus emit) nicotine, tobacco and/or other particulates, their use undermines the City's smoke-free air laws and hazardously exposes the public to secondhand aerosols that have not been scientifically proven as safe.
3. The purpose of the ordinance codified in this chapter is to protect the public health and welfare by prohibiting or regulating smoking in certain places; to guarantee the right of nonsmokers to breathe smoke-free air; and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.
4. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2.

TITLE 6 – HEALTH AND SANITATION

Chapter 6.14: Licensing of Tobacco Sellers

Section 6.14.010 entitled **Definitions** is hereby amended by the following:

6.14.010 DEFINITIONS.

The definition of ***TOBACCO PRODUCT*** is amended to read as follows:

TOBACCO PRODUCT. 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, vapor or any smoke-like substance; 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.

The definition of **TOBACCO SELLER** is amended to read as follows:

TOBACCO AND E-CIGARETTE SELLER. Any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, e-cigarettes, vape pens, or Tobacco Products. "Tobacco and E-cigarette Selling" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco or Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

Section 6.14.020 entitled **Requirement for Tobacco Sellers License** is amended as follows:

6.14.020 REQUIREMENT FOR TOBACCO AND E-CIGARETTE SELLERS LICENSE.

A. It shall be unlawful for any Person to act as a Tobacco or E-cigarette Seller without first obtaining and maintaining a valid Tobacco and E-cigarette Seller's license pursuant to this Chapter for each location at which that activity is to occur. No license may be issued to authorize Tobacco and E-Cigarette Selling at other than a fixed location. For example, Tobacco and E-Cigarette Selling by Persons on foot and Tobacco and E-Cigarette Selling from vehicles are prohibited.

B. The term of a license is one year from the date of issuance, unless earlier suspended, terminated or revoked pursuant to Section 6.14.090. Each licensed Tobacco and E-Cigarette Seller shall apply for the renewal of his or her Tobacco and E-cigarette Sellers license no later than thirty (30) days prior to its expiration.

C. Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco and E-cigarette Sellers license any status or right other than the right to act as a Tobacco and E-cigarette Seller at the location in the City identified on the face of the license. For example, nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by Cal. Labor Code §6404.5.

D. It is the responsibility of each licensed Tobacco and E-cigarette Seller to be informed regarding all laws applicable to Tobacco and E-cigarette Selling, including those laws affecting the issuance of a Tobacco and E-cigarette Sellers license. No licensed Tobacco and E-cigarette Seller may rely on the issuance of a license as a determination by the City that the Tobacco and E-cigarette Seller has complied with all laws applicable to Tobacco and E-cigarette Selling.

Section 6.14.022 is hereby added to Chapter 6.14 as follows:

6.14.022 PERFORMANCE STANDARDS; DEEMED APPROVED ACTIVITIES

An activity shall retain its deemed approved status only if it conforms to all of the following deemed approved performance standards:

- A. That the Tobacco and E-cigarette Seller shall not offer for sale illegal paraphernalia. The offering of sale of such shall result in immediate suspension of a tobacco and e-cigarette license;
- B. That the Tobacco and E-cigarette Seller does not sell tobacco or e-cigarette products to a person under the minimum age for purchase pursuant to state and federal laws;
- C. That the Tobacco and E-cigarette Seller does not adversely affect the peace, or safety of persons residing or working in the surrounding area;
- D. That it does not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, harassment of passersby, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, curfew violations, or police detentions and arrests;
- E. That it does not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute;
- F. That its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of the surrounding neighborhood.

Section 3.

TITLE 6 – HEALTH AND SANITATION

Chapter 6.18: Smoking Pollution Control and Health Protection Regulations

Section 6.18.030 entitled **Definitions** is hereby amended as follows:

6.18.030 DEFINITIONS.

The following definition is added to this section:

ELECTRONIC SMOKING DEVICE. An electronic and/or battery-operated device, the use of which may resemble traditional smoking and that can be used to deliver an inhaled dose of nicotine or other substances including any component, part, or accessory of such a device, whether or not sold separately.

The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, an electronic vape or vaping pen or any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor.

The definition of **SMOKING** is amended to read as follows:

SMOKING. Inhaling, exhaling, burning, carrying, holding or operating of any lighted or heated pipe, cigar, cigarette, electronic smoking device, or any other kind of smoking or vaporizing equipment. Smoking also means the lighting, operating, emitting, or exhaling of the smoke, fumes or vapor of a pipe, cigar, cigarette, electronic smoking device, or other kind of smoking or vaporizing equipment.

Section 6.18.050D is amended to read as follows:

6.18.050 PROHIBITION OF SMOKING IN PUBLIC PLACES.

D. Public Parks and Facilities.

Smoking shall be prohibited in all public parks and facilities in the City of Fort Bragg.

Section 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 5. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember _____ at a regular meeting of the City Council of the City of Fort Bragg held on _____, 2016, and adopted at a regular meeting of the City of Fort Bragg held on _____, 2016, by the following vote:

**AYES:
NOES:
ABSENT:**

ABSTAIN:

Dave Turner
Mayor

ATTEST:

June Lemos
City Clerk

PUBLISH: _____, 2016 and _____, 2016 (by summary).
EFFECTIVE DATE: _____, 2016.