

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. 926-2016

WHEREAS, the hazards related to exposure to secondhand smoke are well documented and have been determined 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 SBX2-7 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 SBX2-75 into law effectively including electronic smoking devices, such as electronic cigarettes (“e-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. Means any of the following:

- A. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff;
- B. Any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
- C. Any component, part, or accessory of a tobacco product, whether or not sold separately.
- D. "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for an approved purpose.

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

TOBACCO SELLER. Any person who sells, offers for sale, or offers to exchange, tobacco products, as defined in this section, for any form of consideration. "Tobacco 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 Seller's License** is amended as follows:

6.14.020 REQUIREMENT FOR TOBACCO SELLER'S LICENSE.

- A. It shall be unlawful for any person to act as a tobacco seller without first obtaining and maintaining a valid Tobacco 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 selling at other than a fixed location. For example, tobacco selling by persons on foot or 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 seller shall apply for the renewal of his or her Tobacco Seller's 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 Seller's license any status or right other than the right to act as a tobacco 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 seller to be informed regarding all laws applicable to tobacco selling, including those laws affecting the issuance of a tobacco and E-cigarette seller's license. No licensed tobacco seller may rely on the issuance of a license as a determination by the City that the tobacco seller has complied with all laws applicable to tobacco 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. The tobacco seller does not offer illegal paraphernalia for sale. The offering of sale of such items shall result in immediate suspension of a Tobacco Seller's license;

B. The tobacco seller does not sell tobacco products to a person under the minimum age for purchase pursuant to state and federal laws;

C. The tobacco seller does not adversely affect the peace or safety of persons residing or working in the surrounding area;

D. The tobacco seller's activities do 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. The tobacco seller's activities do not result in violations to any applicable provision of any other city, state, or federal regulation, ordinance or statute;

F. The tobacco seller's 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 that is used for the purpose of circumventing the prohibition of smoking. 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, or the carrying, holding or operating, of any lighted or heated tobacco product intended for inhalation, whether natural or synthetic, in any manner or form. Smoking also means the use of an electronic smoking device that creates an aerosol or vapor, in any manner or any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

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 October**

24, 2016, and adopted at a regular meeting of the City of Fort Bragg held on November 14, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:

Dave Turner
Mayor

ATTEST:

June Lemos
City Clerk

PUBLISH: October 27, 2016 and November 23, 2016 (by summary).
EFFECTIVE DATE: December 14, 2016.