

## ORDINANCE NO. 516

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BLUE LAKE AMENDING ORDINANCE 487, PROHIBITING SMOKING IN OR AROUND WORKPLACES AND PUBLIC PLACES, TO INCLUDE THE USE OF ELECTRONIC SMOKING DEVICES

The City Council of the City of Blue Lake does ordain as follows:

**Section 1. Findings.** The City Council of the City of Blue Lake hereby finds and declares as follows:

1. The popularity of electronic smoking devices including electronic cigarettes or “e-cigarettes” has grown exponentially, especially among young people; and,
2. Electronic smoking devices are designed to be used in the same manner as conventional tobacco products and operate by heating a liquid chemical solution with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and,
3. A study published in the Journal of Environment and Public Health suggests the electronic smoking devices “may have the capacity to ‘renormalize’ tobacco use in a demographic that has had significant de-normalization of tobacco use previously”; and,
4. The use of electronic smoking devices in public increases the social acceptability and appeal of smoking, particularly for youth, undermining the progress that has been made over the years in discouraging smoking; and
5. 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 in City of Blue Lake, and will threaten the City’s enforcement of these laws; and,
6. 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
7. 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,

8. A recent study confirmed that electronic smoking devices that contain nicotine also emit nicotine in the released vapor and involuntarily expose nonsmokers to nicotine; and,
9. A recent study found a total of 22 elements in the vapors produced by electronic smoking devices, three of these elements (lead, nickel, and chromium) appear on the FDA's "Harmful and Potentially Harmful Chemicals List"; and,
10. The U.S. Center for Disease Control recently reported a rise in emergency calls to poison centers due to exposure to toxic e-cigarette liquids contemporaneous with the rise in e-cigarette use, with calls rising from around one per month in 2010, to 215 per month in 2014; and,
11. Electronic smoking devices currently are not an FDA-approved smoking cessation device; and,
12. 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,
13. The City Council of the City of Blue Lake has previously adopted Ordinance No. 487 Prohibiting Smoking In Or Around Workplaces And Public Places; and,
14. In order to protect the health, safety and welfare of the community the City has decided to legislatively prohibit the use of electronic smoking devices in all areas where the smoking of tobacco products is currently prohibited.

**Section 2. Purpose.** It is the intent of the City Council in enacting this ordinance, to provide for the public health, safety, and welfare by discouraging the inherently dangerous behavior of tobacco use, including electronic smoking, around non-users; by protecting children from exposure to smoking, tobacco and electronic vapors while they play; by reducing the potential for children to associate smoking, tobacco and electronic smoking usage with a healthy lifestyle; by protecting the public from smoking, tobacco-related and electronic cigarette litter; and by affirming and promoting the family atmosphere of the City's public places.

**Section 3. Amendment to Ordinance 487.** Ordinance 487, *Prohibiting Smoking In Or Around Workplaces And Public Places*, Section III, is hereby amended to prohibit the use of electronic smoking devices as shown by the following additions in italics bold text, and by re-lettering the subsections within said Section III, the remaining provisions of said Ordinance are unchanged:

**SECTION III. DEFINITIONS.** For the purposes of this ordinance the following definitions shall govern unless the context clearly requires otherwise.

- (a) "Bar" means a facility that is required under law to possess an on-sale alcoholic beverage license issued by the California Department of Alcoholic Beverage Control and is primarily devoted to the serving of alcoholic beverages for consumption by guests on

the premises, in which the serving of food is incidental. "Bar" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(b) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee, as defined in this section.

(c) "Dining Area" means any area available to or customarily used by the general public, that is designed, established, or regularly used for consuming food or drink.

*(d) "Electronic Smoking Device" means an electronic device which can be used to deliver an inhaled dose of nicotine or any other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.*

(e) "Employee" means any person who is employed; retained as an independent contractor by any Employer, as defined in this section; or any person who volunteers his or her services for an Employer, association, nonprofit, or volunteer entity.

(f) "Employer" means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the service of one or more persons, or supervises volunteers.

(g) "Enclosed" means:

(1) any covered or partially covered space having more than 50% of its perimeter area walled in or otherwise closed to the outside such as, for example, a covered porch with more than two walls; or,

(2) any space open to the sky (hereinafter "uncovered") having more than 75% of its perimeter area walled in or otherwise closed to the outside such as, for example, a courtyard;

(3) except that any uncovered space of more than three thousand (3,000) square feet or more is not enclosed, such as, for example, a field in an open-air arena.

(h) "Multi-Unit Residence" means a building or portion thereof that contains more than one dwelling space consisting of essentially complete independent living facilities for one or more persons, including, for example, permanent provisions for living, sleeping, eating, cooking, and sanitation.

(i) “Multi-Unit Residence Common Area” means any indoor or outdoor common area of a Multi-Unit Residence accessible to and usable by more than one residence, including but not limited to halls, lobbies, laundry rooms, outdoor eating areas, play areas, swimming pools, and parking areas.

(j) “Place of Employment” means any area under the legal or de facto control of an Employer, Business or nonprofit that an Employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, construction sites, vehicles used in employment or for business purposes, taxis, employee lounges, hotel and motel lobbies, conference and banquet rooms, bingo and gaming facilities, long-term health facilities, warehouses, retail or wholesale tobacco shops, and private residences that are used as child care or health care facilities subject to licensing requirements.

(k) “Reasonable Distance” means a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty (20) feet.

(l) “Recreational Area” means any outdoor area, public or private, open to the general public for recreational purposes, regardless of any fee or age requirement, including, but not limited to: parklands, including portions of parks, such as picnic areas, playgrounds, or sports fields; walking paths; gardens; hiking trails; bike paths; horseback riding trails; athletic fields; skateboard parks; and amusement parks.

(m) “Public Place” means any place, public or private, open to the general public regardless of any fee or age requirement, including, for example, bars, restaurants, clubs, stores, taxis, and buses.

(n) “Service Area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction whether or not such service includes the exchange of money including, for example, ATMs, bank teller windows, telephones, ticket lines, and bus stops.

(o) “Smoking” and to “Smoke” means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind) *or use of an electronic smoking device as defined in section (d) above.*

#### **SECTION IV. PROHIBITION OF SMOKING**

(a) Enclosed Places. Smoking shall be prohibited in the following enclosed places within the City of Blue Lake except in places listed in subsection (d) below, and except in such places in which smoking is already prohibited by state or federal law in which case the state or federal law applies:

- (1) Places of Employment;

(2) Multi-Unit Residence Common Areas;

(3) Public Places

(b) Unenclosed Places. Smoking shall be prohibited in the following unenclosed places within the City of Blue Lake except in such places in which smoking is already prohibited by state or federal law in which case the state or federal law applies:

(1) Places of Employment;

(2) Recreational Areas and the parking areas used for parking vehicles of persons accessing a Recreational Area;

(3) Service Areas;

(4) Dining Areas, except unenclosed areas of a Bar that does not serve food. Smoking in an unenclosed area of a Bar is only permitted provided the smoke does not enter adjacent areas in which Smoking is prohibited by any law or by the owner, lessee or licensee of the adjacent property; and providing that any door or opening to the business remains closed.

(5) Multi-Unit Residence Common Areas;

(6) The sites of public events including, for example, sports events, fairs, farmers' markets, speaking performances, and ceremonies, provided however that this prohibition shall not prevent the establishment of a separate, designated smoking area set apart from the primary event area.

(c) No person shall dispose of Smoking waste within the boundaries of an area in which smoking is prohibited, including inside the perimeter of any Reasonable Distance required by the ordinance.

(d) Unless otherwise prohibited by law, smoking is permitted in the following enclosed places:

(1) By performers during theatrical productions, if smoking is an integral part of the story in the theatrical production. Such smoking shall be permitted only if advance notice is provided to the public through advertising and signs posted in the venue lobby and at ticket outlets specifying the following: "Warning to the public, you may be exposed to tobacco smoke while viewing this production.";

(2) Private residential units, except those used as a licensed child care, adult care, or health care facility; and,

(3) Up to 50% of hotel and motel guestrooms. All hotels and motels will designate a minimum of 50% of guest rooms as nonsmoking rooms. In all nonsmoking rooms, permanent “no smoking” signs shall be posted and there will be no ashtrays or matches at any time. Up to 100% of all hotel and motel guest rooms may be designated non-smoking.

#### **SECTION V. REASONABLE SMOKING DISTANCE REQUIRED – 20 FEET**

(a) Smoking in unenclosed areas shall be prohibited within a Reasonable Distance from any entrance, opening, crack, or vent into an enclosed area in which smoking is prohibited.

(b) Smoking in unenclosed areas shall be prohibited within a Reasonable Distance from any unenclosed area in which smoking is prohibited under Section IV(b) of this ordinance.

(c) The prohibitions in subdivisions (a) and (b) shall not apply to areas of private property that are not part of a Multi-Unit Residence Common Area, Place of Employment, Recreational Area, or Service Area.

#### **SECTION VI. DUTY OF PERSON, EMPLOYER, BUSINESS, OR NONPROFIT**

(a) No person, Employer, Business, or nonprofit shall knowingly permit Smoking in an area which is under the legal or de facto control of the person, Employer, Business, or nonprofit and in which Smoking is prohibited by law and the person, Employer, Business or nonprofit is not otherwise compelled to act under state or federal law.

(b) No person, Employer, Business, or nonprofit shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area which is under the legal or de facto control of the person, Employer, Business, or nonprofit and in which Smoking is prohibited, including, without limitation, inside the perimeter of any Reasonable Distance required by this ordinance.

(c) It shall be unlawful for any person to smoke in an area where smoking is prohibited under this ordinance.

(d) Notwithstanding any other provision of this ordinance, any owner, landlord, Employer, Business, nonprofit, or other person who controls any property, establishment, or Place of Employment regulated by this ordinance may declare any part of such area in which smoking would otherwise be permitted to be a nonsmoking area.

#### **SECTION VII. PENALTIES AND ENFORCEMENT.**

(a) Enforcement of this ordinance shall be the responsibility of the Humboldt County Sheriff Department. Any peace officer or code enforcement official also may enforce this ordinance.

(b) Any person acting for the interests of itself, its members, or the general public may bring a civil action to enjoin a violation of this ordinance by a business or to enjoin repeat violations of this ordinance by an individual.

(c) Violations of this ordinance may, in the discretion of the Humboldt County Sheriff Department, be prosecuted as infractions or misdemeanors.

(d) Violations of this ordinance are subject to a civil action brought by the District Attorney or the City Attorney punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.

(e) Any person who Smokes in an area where Smoking is prohibited is guilty of trespass and, if the area is accessible by the public or any Employee during the normal course of operations, such Smoking constitutes a public nuisance.

(f) Causing, permitting, aiding, abetting, or concealing a violation of any provision of the ordinance shall also constitute a violation.

(g) The remedies provided by this ordinance are cumulative and in addition to any other remedy available at law or in equity.

**Section 4. Nonretaliation.** No person or Employer shall discharge or in any manner retaliate against any Employee because such Employee exercises any right to a smoke free environment afforded by this ordinance.

**Section 5. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Blue Lake hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

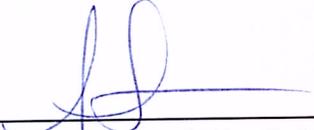
**Section 6. Environmental Review.** This Ordinance is exempt from the California Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines.

**Section 7. Effective Date.** This ordinance shall be in force and effect thirty (30) days following its adoption.

**APPROVED:**

  
\_\_\_\_\_  
Mayor - City of Blue Lake

**ATTEST:**

  
\_\_\_\_\_  
City Clerk - City of Blue Lake

**CLERK'S CERTIFICATE**

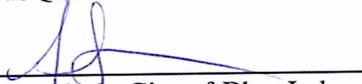
**THIS IS TO CERTIFY** that Ordinance No. 516 of the City Council of the City of Blue Lake was introduced and read at the regular meeting of the City Council of the City of Blue Lake, California, held on Feb. 23, 2016. This Ordinance, again read at the regular meeting of the Blue Lake City Council, held on Mar. 8, 2016 and at the time, passed by roll call vote, the vote on the adoption of the Ordinance being as follows:

AYES: Jones, Lynch, Sawatzky, Kullmann, McCall-Wallace

NOES: none

ABSENT: none

DISQUALIFIED: none

  
\_\_\_\_\_  
City Clerk, City of Blue Lake

AFFIDAVIT OF POSTING OF ORDINANCE NO. 516

STATE OF CALIFORNIA)

COUNTY OF HUMBOLDT)

I, April Sousa, HAVING BEEN FIRST DULY SWORN,

DEPOSES AND SAYS:

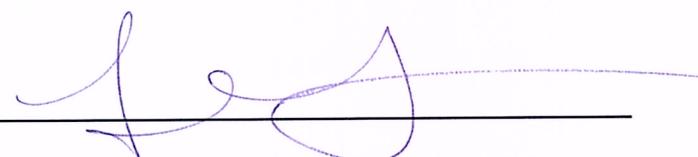
THAT SHE/HE IS AND AT ALL TIMES MENTIONED WAS  
A CITIZEN OF THE UNITED STATES, OVER THE AGE OF 21 YEARS,  
THAT WITHIN 15 DAYS AFTER PASSAGE OF ORDINANCE NO. 516,  
AND ON THE 10<sup>th</sup> DAY OF March, 2016, AFFIANT POSTED  
TRUE AND CORRECT COPIES OF THE SAID ORDINANCE IN THREE  
PUBLIC PLACES IN THE CITY OF BLUE LAKE, ALL IN CONFORMITY  
GOVERNMENT CODE SECTION 36933.

SIGNED

  
\_\_\_\_\_

SUBSCRIBED AND SWORN TO BEFORE

ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_

  
\_\_\_\_\_

CITY CLERK, CITY OF BLUE LAKE