

ORDINANCE NO. 518

**AN ORDINANCE OF THE CITY OF ALTURAS ADDING ARTICLE III TO CHAPTER
30 "SMOKING".**

WHEREAS, the City Council of the City of Alturas does ordain as follows:

Section 1. Article III of Chapter 30 "Smoking" of the code of the City of Alturas is hereby added as follows:

Article III: Flavored Tobacco Ban

Sec. 30-21. DEFINITIONS. The following words and phrases, whenever used in Article III, shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) "Characterizing Flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Flavors may also be characterized by fictional characters such as but not limited to (examples: juice box, rainbow unicorn, cowboy cooler.
- (b) "Flavored Tobacco Product" means any Tobacco Product that imparts a Characterizing Flavor
- (c) "Labeling" means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (d) "Manufacturer" means any person, including any re-packer or re-labeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.
- (e) "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold or offered for sale to a consumer.
- (f) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(g) "Tobacco Paraphernalia" means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.

(h) "Tobacco Product" means:

- (1) 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, snuff;
- (2) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, heat not burn devices (HNB), electronic cigar, electronic pipe, or electronic hookah.
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "Tobacco Product" includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any 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 such product is marketed and sold solely for such an approved purpose. (i) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Sec. 30-22. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED

- (a) It shall be a violation of this or any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product. (b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.
- (b) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:

- (1) Made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
 - (2) Used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor;
or
 - (3) Taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.
- (c) The following product are excluded:
- (1). Menthol cigarettes
 - (2) Menthol flavored 1.2 oz. fiberboard/plastic round containers
 - (3) Any tobacco retailer whose inventory includes Flavored Tobacco Products may continue to sell Flavored Tobacco Product(s) until supply is exhausted but shall not order new supplies at the time this chapter becomes effective for an additional 60 days after ordinance effective date.

Sec. 30-23. ENFORCEMENT.

- (a) In addition to any other remedy, any person violating any provision of this chapter shall be guilty of a misdemeanor for each day such violation continues, which shall be prosecuted by the Modoc County District Attorney.
- (b) Any violation of this chapter may be remedied by a civil action brought by the City Attorney. The City may recover reasonable attorneys' fees and costs of the suit in any civil action brought by the City Attorney to remedy any violation of this chapter.
- (c) Any person violating the provisions of this chapter shall also be liable for civil penalties of not less than two hundred and fifty dollars (\$250.00) or more than two thousand five hundred dollars (\$2,500.00) for each day the violation continues.
- (d) Violations of the chapter are also hereby declared to be public nuisances, subject to the abatement of public nuisances under the Municipal Code of the City of Alturas.
- (e) In addition to criminal sanctions, civil penalties as provided in this section, and other remedies set forth in this chapter administrative penalties of not more than one hundred and fifty dollars (\$150.00) for the first violation of this chapter, three hundred dollars (\$300.00) for the second violation of this chapter within a year of the first violation of

this chapter, and six hundred dollars (\$600.00) for the third violation of this chapter and subsequent violation of this Chapter within a year of a first violation of this chapter. All administrative penalties imposed for violations of this Chapter shall be cited by the Alturas City Police Department. Any person or entity who is cited for an administrative penalty may appeal the penalty by requesting an appeal hearing within fifteen (15) days of the date of the citation. After fifteen days, the citation may not be appealed. Timely appeal shall stay further action until date set for hearing. The City Clerk shall set before the City Council after receiving a request in writing for an appeal. The appellant shall be provided with notice of the appeal hearing at least fifteen days prior to the hearing date. The appellant shall have the right to appear in person or by agent, designated in writing, at the hearing and present oral, written and/or photographic evidence. The order of the City Council denying or granting an appeal shall be issued within fifteen days of the date of the hearing and shall be final.

- (f) The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.

Sec. 30-24. 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 Alturas 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 be declared invalid or unenforceable.

Sec. 30-25. EFFECTIVE DATE. This Ordinance shall take effect and be in force 6 months after date of enactment.

Section 2. This Ordinance shall take effect thirty (30) days from the date of its passage. Before the expiration of fifteen (15) days after its passage, this Ordinance shall be published in the Modoc Record, a newspaper of general circulation, printed and published in the City of Alturas in a manner meeting the requirements of California Government Code Sections 36931 through 36937.

PASSED AND ADOPTED by the City Council of the City of Alturas at a regular meeting held on the 19th day of November, 2019, by the following vote:

AYES: Cheryl Nelson; Bobby Ray; Mark Steffek

NOES: None

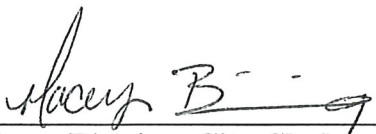
ABSENT: Jim Irvin; Loni Lewis

ABSTAIN: None



Bobby Ray, Mayor

ATTEST:



Macey Binning, City Clerk

STATE OF CALIFORNIA
COUNTY OF MODOC...
CITY OF ALTURAS
I, MACEY BINNING, CITY CLERK, DO HERBY CERTIFY
THAT THIS IS A FULL, TRUE AND CORECT COPY OF
THE ORIGINAL DOCUMENT ON FILE IN MY OFFICE.
WITNESS MY HAND AND OFFICIAL SEAL THIS
12 DAY OF December 2019

MACEY BINNING, CITY CLERK

BY 