

ORDINANCE NO. 1480

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA ADDING CHAPTER 4 TO TITLE 3 OF THE ARCATA MUNICIPAL CODE, REGULATION OF THE SALE, PURCHASE, AND POSSESSION OF BUTANE

The City Council of the City of Arcata does ordain as follows:

Section 1: Title III (Public Safety), Chapter 4 (Regulation of the Sale, Purchase, and Possession of Butane), Sections 3840-3846, is hereby added to the Arcata Municipal Code as follows:

TITLE III: Public Safety **CHAPTER 4: Regulation of the Sale, Purchase, and Possession of Butane**

SEC. 3840. Findings and Purpose.

The Council hereby finds as follows:

1. The northern region of our State has experienced a recent increase in explosions caused from the manufacture of honey oil (also known as hash oil) in clandestine labs using refined butane. These incidents have caused considerable property damage, personal injury and even incidents of death to those participating in the manufacturing process, and to innocent bystanders.
2. The type of butane used to make honey oil is commonly described on the canister in which it is sold as “refined,” “pure,” “purified,” “premium” and/or “filtered.”
3. Refined butane is used for the purpose of dissolving tetrahydrocannabinol (THC) resin, which concentrates into a liquid/oil form as a result of the butane’s stripping process. The stripping of the THC through use of refined butane causes flammable butane vapors to accumulate low to the ground and remain exposed to ignition sources. Studies suggest that 99.5 percent of the extracted THC butane mixture will volatilize into the immediate area and remain in a form that is odorless and latent to the human eye and only detected through a combustible gas instrument.
4. A honey lab using refined butane presents a serious hazard for first responders as the gas has no odor and can only be detected by a combustible gas instrument. Such conditions present a grave risk of loss where devices typically deployed by first responders are capable of igniting the gas resulting in an explosion.
5. There are many legitimate uses of butane, for example, camping stoves, small kitchen and craft appliances, and cigarette lighters. However, the sale and possession of refined butane in quantities associated with the manufacture of honey oil presents grave dangers and adverse health risks to the occupants of the City of Arcata and the first responders and should be regulated.

SEC. 3841. Definitions. Unless a provision explicitly states otherwise, the following terms and phrases as used in this Chapter are defined as follows:

A. “Butane” means iso-butane, n-butane, and butane contained in a canister, tank or cylinder labeled with any or all of the following words used to describe the butane contents: “refined,” “pure,” “purified,” “premium,” “filtered” and/or power 5x or greater.

B. “Customer” means any Person who purchases or acquires, or who seeks to purchase or acquire, during a Transaction products from any retail store.

C. “Person” means a corporation, co-partnership, or association as well as a natural person.

D. “Retailer or Reseller” means any business, company, corporation, Person, employee or associate selling products to any customer within the City of Arcata. It does not include any Wholesaler engaged in a wholesale Transaction.

E. “Sell” means to furnish, give away, exchange, transfer, deliver, surrender, distribute or supply, whether for monetary gain or other consideration.

F. “Transaction” means a purchase, sale, trade, loan, pledge, investment, gift, transfer, transmission, delivery, deposit, withdrawal, payment, exchange of currency, extension of credit, purchase or sale of any monetary instrument, or an electronic, magnetic or manual transfer between accounts or any other acquisition or disposition of property by whatever means effected.

G. “Vendor” means any Person who is engaged in the wholesale or retail/resale sale of “Butane,” as that term is defined herein.

H. “Wholesaler” means any business, company, corporation, or Person whose business is the selling of goods in gross to Retailers for the purposes of resale.

SEC. 3842. Unlawful Sale, Purchase, and Handling of Butane.

A. It is unlawful for any Retailer, Reseller or Person to Sell to a Customer any number of Butane canisters, tanks or cylinders that exceed a combined total storage quantity of 600 ml of Butane during a single Transaction.

B. It is unlawful for any Person that is not a Vendor (Wholesaler or Retailer/Reseller) to have in their possession, custody or control any number of Butane canisters, tanks or cylinders that exceed a combined total storage quantity of 600 ml of Butane at any one time.

C. It is unlawful for any Customer of a Retailer or Reseller to purchase or acquire per calendar month any number of Butane canisters, tanks or cylinders that exceed a combined total storage quantity of 600 ml of Butane, whether sold individually or by the package.

SEC. 3843. Tracking of Butane Sales and Records Retention. Every Vendor shall do all of

the following:

A. Store Butane, or cause it to be stored, in a manner that makes it inaccessible without employee assistance to the public in the regular course of business pending legal sale or disposition; and

B. Limit the quantity of Butane that may be purchased by a Person within a calendar month to no more than 600 ml; and

C. Sell Butane only to Persons 18 years of age or older; and

D. Require any Person who wishes to purchase Butane to present a valid driver's license or other form of government-issued identification bearing the prospective purchaser's photograph, date of birth, and current residence address; and

E. Record the following information in connection with each sale of Butane and maintain on the premises of the Vendor for a period of not less than two (2) years from the date of sale:

1. The full name and residence address of the purchaser, as obtained from identification described in Section 3483.D;
2. The date and time of the sale;
3. The brand and amount of Butane sold;
4. The type of sale, i.e., retail or wholesale;
5. If a wholesale sale, the purchaser's seller's permit number as reflected on the resale certificate, if a resale certificate is taken from the purchaser pursuant to California Revenue and Taxation Code section 6091; and
6. The full name of the Person who processed the sale.

F. The Vendor shall provide the record of sales information as described in Section 3843.E above upon request of the City of Arcata or its authorized representative or agent.

G. The Vendor shall post in a location conspicuous to potential Customers notice stating the sales restrictions required by this Section.

SEC. 3844. Enforcement and Penalty

A. Each act in violation of this Chapter shall constitute a separate offense and is punishable as a misdemeanor or infraction, chargeable at the City Attorney's discretion.

B. Allegation and evidence of a culpable mental state is not required for proof of an offense defined by this Chapter, except where expressly required by this chapter.

C. Any condition dangerous to human life, unsafe or detrimental to the public health or safety shall be subject to abatement in accordance with Title V, Chapter 5 of the Arcata Municipal Code.

SEC. 3845. Exemptions.

A. A Person possessing a valid C-20, C-36 and/or C-38 Contractors License issued by the California Department of Consumer Affairs, Contractors State License Board shall not be in violation of this Code for possession or purchasing a quantity of Butane greater than the maximum amounts allowed under Section 3842 where all of the following are satisfied:

1. The C-20, C-36 and/or C-38 Contractors License, or a readable copy thereof, is carried on the Person during all times that the Butane is possessed by the contractor;
2. The Butane is used for the purpose of performing qualified tasks under the contractor's license held by the Person carrying the Butane;
3. The contractor is in good standing with the California State Contractors License Board; and
4. The Person, or company with which he/she is employed and performing the contracting tasks under the C-20, C-36 and/or C-38 Contractors License, possesses a valid business license.

B. A Person possessing a valid volatile manufacturing license issued in compliance with State and City laws and regulations.

SEC. 3846. Cumulative Remedy.

Nothing herein is intended to limit the City from pursuing any other remedy available at law or in equity against any Person or entity maintaining, committing, or causing a public nuisance or any other violation of the local, State or Federal law.

Section 3: Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 4: This ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that regulating the sale of butane may have a significant effect on the environment.

Section 5: This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: January 18, 2017

ATTEST:

/s/ Kara Newman-Ferdolage
City Clerk, City of Arcata

APPROVED:

/s/ Susan Ornelas
Mayor, City of Arcata Clerk's Certificate

I hereby certify that the foregoing is a true and correct copy of **Ordinance No. 1480**, passed and adopted at a regular meeting of the City Council of the City of Arcata, Humboldt County, California on the 18th day of January, 2017, by the following vote:

AYES: ORNELAS, PEREIRA, PITINO, WHEETLEY, WINKLER

NOES: NONE

ABSENT: NONE

ABSTENTIONS: NONE

/s/ Kara Newman-Ferdolage
City Clerk, City of Arcata