City of Biggs

Agenda Item Staff Report
For the Regular City Council Meeting:
August 9, 2016

TO: Honorable Mayor and Members of the City Council

FROM: City Administrator

SUBJECT: Ordinance Restricting the Resale and Possession of Butane Products

Background:

To aid in addressing the various public safety issues associated with the manufacture of Butane Honey Oil (BHO) (AKA: Hash, hash oil, or concentrated marijuana) the Butte County District Attorney's Office and other Butte County Law Enforcement agencies worked together to draft a model ordinance.

The ordinance, if passed, will restrict both the resale and possession of refined butane products, with an exception for legally viable purposes. The intent of the ordinance is to restrict the illegal production of what is known as Butane Honey Oil (BHO), essentially a potent marijuana based extract consisting of concentrated Tetrahydrocannabinol {THC), in which refined butane is used as the primary processing agent.

Northern California, and Butte County specifically, has experienced a marked increase in the seizure of clandestine Butane "Honey Oil" (BHO) laboratories, with several explosions associated with these laboratories. BHO laboratories extract Tetrahydrocannabinol {THC) from marijuana plant material, using a refined butane extraction process, producing a concentrated form of marijuana ("Butane Honey Oil"). When refined butane is utilized and evaporated during the THC extraction process, a highly volatile vapor is produced that is not detectable through human senses, and is heavier than air. It will often pool in low lying areas where common ignition sources are present.

Recommendation: Review and introduce the following ordinance by reading of the title:

ORDINANCE NO. 408

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BIGGS, CALIFORNIA, ADDING CHAPTER 7.55, RELATED TO BUTANE RESALE REGULATIONS, TO TITLE 7, PUBLIC PEACE, MORALS AND WELFARE, OF THE BIGGS MUNICIPAL CODE

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Mark Sorensen, City Administrator

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WHEREAS, the northern region of the State of California has experienced a recent increase in explosions caused from the manufacturing of honey oil (also known as hash oil) in clandestine labs using extremely volatile butane as a solvent to strip the oils from marijuana. These incidents have caused considerable property damage, personal injury and even incidents of death to those participating in the manufacturing process, as well as innocent bystanders;

WHEREAS, the use of butane breaks down and dissolves the Tetrahydrocannabinol (THC) from marijuana plants, creating a concentrated form of marijuana. This process creates inherent dangers as the butane quickly evaporates during the process leaving behind an extremely volatile vapor that will ignite given an ignition source. Butane is also odorless, colorless and its vapors are heavier than air and will therefore pool in low lying areas seeking out ignition sources. Studies suggest 99.5% of the butane used to extract the THC will volatilize into the immediate area and remain in a form that is odorless and latent to the human eye and can only be detected through a combustible gas instrument;

WHEREAS, honey oil labs using butane as the solvent to extract the THC from marijuana present serious hazards to both property and persons, including first responders and innocent bystanders, and that such conditions present grave risk of loss where any form of ignition sources are capable of igniting the gas resulting in an explosion and/or flash fire. Some examples of these ignition sources are wall switches, thermostatic switches, refrigerator/freezer motors, wall outlets, cigarettes, torches, electric pumps, and even static electricity; and

WHEREAS, the resale of butane occurs at levels that are only relevant to the manufacturing of honey oils. Such sales and possession of butane should be regulated to prevent the use of butane in the manufacture of honey oil where such activity presents grave dangers and adverse health risks to the occupants of the City of Biggs (the "City") and the first responders therein.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Biggs:

Section 1. Findings and Purpose. The City Council finds and declares that the above recitals are true and correct and hereby incorporate them herein by this reference.

Section 2. Authority. This ordinance is adopted pursuant to the authority granted by the California Constitution and State law, including but not limited to Article XI, Section 7 of the California Constitution and California Government Code Sections 36900 and 36901.

Section 3. Chapter 7.55 is hereby added to Title 7, titled PUBLIC PEACE, MORALS AND WELFARE, of the Biggs Municipal Code to read as follows:

TITLE 7
PUBLIC PEACE, MORAL AND WELFARE

Chapter 7.55 REGULATION OF BUTANE RESALE

Section:

7.55.010 Definitions.
7.55.020 Unlawful Sale, Purchase and Handling of Butane.
7.55.030 Tracking of Butane Sales.
7.55.040 Penalties, Strict Liability, and Nuisance.
7.55.050 Cumulative Remedy.

7.55.010 Definitions.

For the purpose of this chapter, the following definitions shall apply:

A. "Butane" means iso-butane, n-butane, and refined butane of any power.

B. "Canister" means a single container designed or used for the storage of butane under pressure.

C. "Code" means the Biggs Municipal Code.

D. "Count" means the number of canisters of butane.

E. "Customer" means any person who is sold or acquires during a transaction products from any retail store.

F. "Day" means calendar day.

G. "Person" means a corporation, co-partnership, or association as well as a natural person.

H. "Reseller" means any business, company, corporation, person, employee or associate selling products to any customer within the City of Biggs. It does not include any wholesaler engaged in a wholesale transaction.

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

J. "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.

K. "Wholesaler" means a person whose business is the selling of goods in gross to retail stores for purposes of resale.

7.55.020 Unlawful Sale, Purchase and Handling of Butane.

A. It is unlawful for any reseller or other person to sell, offer to sell, or otherwise provide to a customer any number of butane canisters that exceed a combined total storage of 600 ml of butane during any single transaction.

B. It is unlawful for any customer to purchase or acquire any number of butane canisters that exceed a combined total storage capacity of 600 ml of butane during any 30-day period.

C. It is unlawful for any person to have in their possession, custody, or control any number of butane canisters that exceed a combined total storage capacity of 600 ml of butane at any one time. The limitation in this subsection shall not apply to the following:

1. butane canisters possessed by wholesalers or resellers solely for the purposes of resale; or

2. butane canisters possessed by persons solely for the purposes of furthering their ongoing, lawful, and City-licensed commercial operations which require butane quantities greater than 600 ml.

3. butane canisters containing a sulfur-containing odorant, such as ethylmercaptan.

7.55.030 Tracking of Butane Sales.

A. For every sale of butane, the Reseller shall prepare a bill of sale that identifies the date of sale, quantity of butane purchased, and the purchaser's identification. Purchaser's identification as used herein shall mean a person's first and last name as verified from a valid driver's license or other official and valid state-issued identification that contains a photograph of the purchaser and a residential or mailing address. Reseller shall retain a copy of the bill of sale in readable form for a period of two years.

B. It shall be unlawful for any reseller to sell butane to any customer without complying with Section 7.55.030(A) of this Code.

7.55.040 Penalties, Strict Liability, and Nuisance.

A. Any violation of this Chapter is a misdemeanor and subject to a $1,000 penalty and/or six months in the county jail; provided, however, the City shall have the discretion to reduce the misdemeanor to an infraction. A separate offense shall exist for every single violation of this Chapter in accordance with Chapter 1.20 of the Code. The criminal prosecution of any violation of this Chapter does not preclude the City of Biggs from the further initiation of any other civil or administrative proceeding which may be available as a remedy for such violation in accordance with Title 1 of the Code.

B. This chapter is a regulatory provision necessary for the protection of the public health, welfare and safety. In any criminal prosecution for a violation of this chapter, it is not necessary to prove knowledge or criminal intent.

C. A violation of any provision of this chapter constitutes a public nuisance.

7.55.050 Cumulative Remedy.

Nothing herein is intended to limit the City of Biggs 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 Code or State or Federal law.

Section 4. This ordinance is exempt from CEQA pursuant to section 15061(b)(3) which is the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and CEQA does not apply where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. This ordinance has no impact on the physical environment as it will not result in any changes.

Section 5. If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 6. The city clerk shall attest to the passage and adoption of this Ordinance, and shall cause the same to be posted as required by law, and this Ordinance shall take effect thirty (30) calendar days after its adoption.

THE FOREGOING ORDINANCE was adopted by the City Council of the City of Biggs at its meeting held on _____, 2016, by the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN: