



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: MARCH 17, 2020
TO: PUBLIC SAFETY COMMITTEE
FROM: HEATHER GUREWITZ
AGENDA ITEM TITLE: DRUG PARAPHERNALIA AND YOUTH TOBACCO SALES

BACKGROUND AND OVERVIEW:

In 2016, the California voters approved the Adult Use of Marijuana Act (AUMA). In 2017, the California State Legislature passed Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), which merged AUMA with the Medical Marijuana Act. The state initially adopted emergency regulations in 2017 and has since updated them several times, and created a new agency, Bureau of Cannabis Control. MACURSA also established the authority of local jurisdictions to regulate cannabis activity.

In 1982, the Fort Bragg City Council passed Ordinance 575, §1 to prohibit the display and sale of drug paraphernalia which is currently in the City of Fort Bragg Municipal Code. The City's Code has not been updated since 1982 and has been difficult to enforce in the past because most objects listed in the code have other uses, specifically consuming tobacco.

The State of California also addresses Drug Paraphernalia in The Health and Safety Code, Division 10, Chapter 6 Article 4 Sections 11364 and 11364.5. These sections of the state code were updated in 2017 and 2021 to be consistent with MAUCRSA.

Staff requested direction on whether to address Chapter 9.28 from the Community Development Committee (CDC) on February 23, 2021. The CDC referred the matter to the Public Safety Committee.

At the February 23rd CDC meeting, staff from Mendocino County Public Health and the North Coast Tobacco Partnership attended and advocated for developing measures to prevent youth tobacco use including a prohibition on selling flavored tobacco.

The City has tried to address this issue. The City of Fort Bragg Police Department recently received a grant from the Department of Justice through Prop 56 to fund a School Resource Officer (SRO) to deliver tobacco education to students at Fort Bragg Unified School District in grades 3 through 10. The original program was suspended due to COVID19, but the Police Department will be attempting to resume the SRO Grant program with the school district on a limited basis for the remaining 10 weeks of school. The program will include five-minute education videos and 30-minute Zoom meetings with parents and teachers.

Additionally, the City contracts with the County of Mendocino who conducts regular “sting operations” on youth tobacco sales. Between May of 2013 and July of 2019, there were 11 operations conducted. Only one Fort Bragg tobacco seller has never been caught selling tobacco to an underage individual. All other tobacco sellers were caught at least once and most more than once. One seller has been caught selling tobacco to youth in all three of the most recent sting operations. The instances of stores selling tobacco to youth shows an increase of an average of 2.6 from 2013-2015 to 3.2 for 2017-2019. There were no operations in 2020 because of the COVID-19 pandemic.

Analysis of Chapter 9.28 Drug Paraphernalia:

Chapter 9.28 (see ATTACHMENT 1) is very specific to the sale of drug paraphernalia. Most of the chapter prohibits the sale of products that can be used to cultivate or ingest cannabis products, which is now legal in California. In the past, staff have tried to code enforce on the display of “water pipes,” “bongs,” or other devices that appear to be for cannabis use. However, past legal counsel informed staff that as long as the owner claims the devices are for a uses other than drugs, it is not possible to enforce the code.

Staff also consulted the “Getting it Right from the Start Project” from the Public Health Institute in Oakland, California. This non-profit works with Cities and Counties “to develop and share models for safer cannabis policy and provide guidance on policies that can reduce harm, protect against youth and problem cannabis use, and promote social equity. Their response to the question of how this chapter can be amended was:

“After reading this I can understand the original intention. However, given the proliferation of online retailers selling the items this legislation bans, today it does not necessarily accomplish the intended goal. I would also point out that there are unintended consequences associated with driving people, especially youth, to the online marketplace for these very items; they are exposed to far more influential marketing and more dangerous items available through online retailers (i.e., unregulated cannabinoid-containing products, kratom, etc.).”

Staff is requesting direction on how to move forward with drafting updates or changes to this ordinance.

Possible Options:

1. Do nothing and leave as is.
2. Update the existing drug paraphernalia code for consistency with the state code (See Attachment 2).
3. Repeal this Code and rely on state law.

4. Repeal this code and adopt a more proactive code that is comprehensive in addressing youth drug, alcohol, and tobacco use and alcohol, drug, and tobacco abuse.
 - Ban the marketing of tobacco, alcohol, cannabis, or paraphernalia to children.
 - Ban the display of drug and tobacco paraphernalia along the public right of way.
 - Recommend that businesses selling drugs, tobacco, or alcohol provide notices outside their businesses.
 - Adopt a resolution that encourages businesses to adopt practices that support public health.

RECOMMENDATION:

Provide direction to staff on whether the Public Safety Committee would like to update Municipal Code Chapter 9.28 Drug Paraphernalia, and if so, how the Public Safety Committee would like to update the code.

Provide direction to staff to analyze and potentially draft recommended updates to Chapter 6.14 Licensing of Tobacco Sellers.

ALTERNATIVES:

Keep existing Chapter 9.28 Drug Paraphernalia with no updates.

Keep existing Chapter 6.14 Licensing of Tobacco Sellers with no updates.

ATTACHMENTS:

1. City of Fort Bragg Municipal Code Chapter 9.28 Drug Paraphernalia
2. City of Fort Bragg Municipal Code Chapter 6.14 Licensing of Tobacco Sellers
3. State of California Drug Paraphernalia Code
4. County of Mendocino Tobacco Ordinance
5. Documents sent by Mendocino County Public Health
6. Correspondence with Safe RX