

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF FORT BRAGG,
CALIFORNIA ADDING SECTION 9.40.030
TO CHAPTER 9.40 PUBLIC
DRUNKENNESS OF TITLE 9 (PUBLIC
PEACE, SAFETY AND MORALS) OF THE
FORT BRAGG MUNICIPAL CODE,
REGARDING THE REGULATION OF
OPEN CONTAINERS IN PUBLIC.**

ORDINANCE NO. 944-2019

WHEREAS, the City of Fort Bragg, pursuant to its police power, may enact regulations for the public peace, morals, and welfare of the City; and

WHEREAS, the City of Fort Bragg ("City") finds and determines that possession of open containers of alcohol, as defined in California Vehicle Code Sections 23221 to 23229 and as amended herein, on City-owned real property or rights-of-way is contrary to the public health, safety, and welfare; and

WHEREAS, the California Business and Professions Code Section 25620 states that any person possessing any can, bottle, or other receptacle containing any alcoholic beverage that has been opened, or a seal broken, or the contents of which have been partially removed, in any city, county, or city and county owned park or other city, county, or city and county owned public place, or any recreation and park district, or any regional park or open-space district shall be guilty of an infraction if the city, county, or city and county has enacted an ordinance that prohibits the possession of those containers in those areas or the consumption of alcoholic beverages in those areas; and

WHEREAS, the City, in the interest of public health, safety and welfare, finds and that there exists a significant risk of injury for pedestrians who are under the influence of alcohol while traversing in or around public right of ways and facilities; and

WHEREAS, the City has determined that it is reasonable and necessary, to provide restrictions on the possession of open containers of alcohol in public places; and

WHEREAS, the passage of an ordinance restricting open containers of alcohol in public places would provide an enforcement mechanism to remedy the recent complaints about this type of activity; and

WHEREAS, the City Council of Fort Bragg finds the regulations set forth in this ordinance are necessary to protect the public safety and welfare of the residents of the City; and

WHEREAS, all legal prerequisites prior to the adoption of this ordinance have occurred.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Municipal Code Addition. The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this ordinance.
2. Adoption of this ordinance is in the best interest of the City of Fort Bragg in that this ordinance regulates public drunkenness, and in so doing, promotes the public health, safety, and welfare of the residents of the City.

Section 2: Section 9.40.030 of Chapter 9.40 (Public Drunkenness) of Title 9 (Public Peace, Safety and Morals) is hereby added to the Fort Bragg Municipal Code as follows:

CHAPTER 9.40 PUBLIC DRUNKENNESS

9.40.030 - POSSESSION OF OPEN CONTAINERS PROHIBITED

- A. It shall be unlawful for any person to drink or possess upon his person an open container of any intoxicating liquor upon any sidewalk, street, alley or other public place in the city, or in other areas commonly held open to the public use, except:
- (1) Public streets or sidewalks on which the city has granted an encroachment permit for a sidewalk cafe, beer garden or equivalent use that includes on-site alcohol sales; or
 - (2) Special events if the city has granted a limited use permit or other permit that, during the event, authorizes or permits persons attending the event to consume alcoholic beverages in areas where such consumption/possession is otherwise prohibited by this section. Special event includes, but is not limited to, the following types of activities: a neighborhood block party, barbecue, picnic, fundraiser, community event or any other type of similar social event.
- B. It shall be unlawful for any person to consume any alcoholic beverage or to have in his or her possession any open container of beer, wine, or any alcoholic beverage, or intoxicating liquor in any private parking lot that is located on property containing two or more residential dwelling units if such parking lot is posted with a sign prohibiting the possession of an open container of an alcoholic beverage or the consumption of an alcoholic beverage.
- C. The owner of property containing two or more dwelling units may prohibit the possession of an open container of an alcoholic beverage or the consumption of an alcoholic beverage within any parking lot on such property by posting a sign in plain view at or near each driveway to the parking lot that sets forth such prohibition substantially in the following form:
- “Possession of an open container of an alcoholic beverage or consumption of an alcoholic beverage is prohibited in this parking lot. Sec. 9.40.030 of the Fort Bragg Municipal Code.”

Such sign shall be no smaller than seventeen inches by twenty-two inches in size, shall

contain lettering at least one inch in height, and shall be mounted so that the lower edge of the sign is at least four feet, and the top edge does not exceed seven feet above ground level. The property owner shall have sole responsibility for the construction and maintenance of such sign.

D. This section does not apply when an individual is in possession of an alcoholic beverage container for the purpose of recycling or other related activity.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Albin-Smith at a regular meeting of the City Council of the City of Fort Bragg held on January 28, 2019, and adopted at a regular meeting of the City of Fort Bragg held on February 11, 2019 by the following vote:

**AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSED:**

**William V. Lee
Mayor**

ATTEST:

**June Lemos, CMC
City Clerk**

**PUBLISH: January 31, 2019 and February 21, 2019 (by summary).
EFFECTIVE DATE: March 13, 2019.**