



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Norberto Duenas
Deputy City Manager

SUBJECT: SOCIAL HOST ORDINANCE

DATE: May 3, 2012

Approved

Date 5/3/12

RECOMMENDATION

Approve an ordinance amending Title 10 of the San José Municipal Code to add a new chapter relating to social host responsibility to deter the service of alcoholic beverages to and consumption of alcoholic beverages by underage persons at certain gatherings.

OUTCOME

The Social Host Ordinance will amend the San José Municipal Code to add a new Chapter relating to Social Host Responsibility to deter the service of alcoholic beverages to, and consumption of alcoholic beverages by, underage persons at certain gatherings.

BACKGROUND

In the past several years concerns have been raised by community members, school administrators, non-profit organizations and young people themselves about the dangers associated with gatherings where underage drinking occurs. In particular complaints have been made about situations where a person hosts or allows gatherings to take place in their private home or residence where underage drinking occurs. Underage drinking is illegal under almost any circumstance (with some religious exceptions) and the City has the ability to bring criminal charges in certain circumstances against adults providing alcohol or hosting parties where underage drinking takes place. The Municipal Code currently provides for fines and response costs for "disturbances" regardless of the cause, so disturbances caused by underage drinking are already covered by existing Municipal Code provisions. However, the San José Municipal Code currently lacks a Social Host provision that would allow fines or response costs to be assessed against the person(s) responsible for hosting a gathering where underage drinking occurs, but there is no disturbance.

Voices United, a non-profit who seeks to be the Silicon Valley resource on substance use and addiction, has been at the forefront of calls for adoption of a Social Host Ordinance. Responding to a presentation by Voices United about underage drinking gatherings in June 2010, the San

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José Youth Commission passed a motion to collaborate with Voices United on public forums on the issue. Five community forums were held beginning in 2010 in Council Districts 2, 5, 7, and 10. On November 10, 2010, the Rules and Open Government Committee requested a workload assessment for developing an ordinance. The City Attorney provided this assessment at the December 8, 2010 meeting of the Rules and Open Government Committee. On April 13, 2011, Voices United presented information about a potential Social Host Ordinance to the Neighborhoods Commission.

In August 2011, with the completion of other priority ordinance work, Council added the Social Host Ordinance to the set of ten priority ordinances. This action provided direction to the City administration to begin work on researching a potential Social Host ordinance, to conduct outreach with affected stakeholders and to draft an ordinance for Council approval.

As part of the outreach on the potential Ordinance, City staff held discussions with the Youth Commission on February 29, 2012; the Schools/City Collaborative on the morning of March 14, 2012; and the Neighborhoods Commission on the evening of March 14, 2012. Following the outreach, City staff conducted additional research in response to questions raised by the community, including further research on other jurisdictions that have implemented a Social Host Ordinance. City Manager's Office staff then worked with the City Attorney's Office and Police Department to develop the draft ordinance outlined in this memorandum.

ANALYSIS

Title 10 of the San José Municipal Code deals with Public Peace, Morals and Welfare. The proposed ordinance would amend Title 10 of the San José Municipal Code to add a new Chapter 10.30 relating to Social Host Responsibility. The purposes of this Chapter include: deterring the service of alcoholic beverages to, and the consumption of alcoholic beverages by, underage persons at certain gatherings; to protect public health, safety, general welfare and quiet enjoyment of property and properties neighboring these gatherings; and to reduce the costs of providing police, fire and other emergency response services to underage gatherings.

The proposed ordinance would prohibit underage gatherings and create the ability to assess both administrative fines and response costs on the responsible person(s). In the ordinance Underage Gatherings are defined as a party or gathering of four (4) or more persons at a residence or other private property at which alcoholic beverages are being consumed or possessed by one (1) or more underage persons, or one (1) or more underage persons are under the influence of alcoholic beverages.

The responsible person is broadly defined to include the owner or renter of the property, the person in immediate control of the property, or the person who organizes or hosts or allows the gathering. The landlord of a rental property is not considered a responsible person for the purposes of the Social Host Ordinance, unless they meet the other criteria i.e. either being in immediate control of the property or having knowledge of and allowing an underage gathering.

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A violation of the Social Host Ordinance would be enforceable through administrative citation and follow the normal City administrative citation process. The fines and response costs associated with a violation are those set out by the City's adopted policies and the Municipal Code.

The Social Host ordinance will not apply to any property owned or leased by other governmental agencies and used for governmental purpose. This includes student residence halls on Campus at San José State University. The San José State University (SJSU) Police Department through a Memorandum of Understanding with the City of San José has primary enforcement responsibility over a number of off-campus fraternity and sorority houses. The development of this ordinance has been coordinated with the SJSU Police Department and they are aware of and supportive of all provisions.

Concerns about the potential Social Host ordinance that were raised during the outreach or internal discussions include: potential issues with implementation; civil liberties concerns; and workload considerations. These three are discussed briefly below.

Issues with Implementation:

A survey of six other jurisdictions with Social Host ordinances in place show that the social host ordinance is in practice seldom used. The effectiveness of social host ordinances at curbing underage drinking gatherings is unclear. While some research has concluded that social host liability lowered the probability of binge drinking and driving under the influence, most of the evidence linking social host ordinances to a reduction in underage drinking is anecdotal. The experience of other jurisdictions suggests that these ordinances can be effective when implemented in conjunction with a comprehensive and robust awareness campaign.

Civil Liberties Concerns:

Since the existing ordinance prohibits all underage drinking gatherings of four or more in private residences, it applies broadly to circumstances such as family dinners, where an underage person is served even a small quantity of alcohol. The reality is that existing laws relating to serving alcohol to minors do not exempt family dinners or similar circumstances. In addition, in order to enter into a private home to enforce the ordinance the Police will still either need to be invited in or have a warrant, unless an exception to the warrant requirement applies. The proposed Code specifically exempts activities protected by Article 1, Section 4 of the California Constitution, the California Alcohol Beverage Act, and the First and Fourteenth Amendments to the Federal Constitution. The proposed ordinance does not weaken any constitutional rights of those involved.

Workload Considerations:

Implementation of the Ordinance will require informing and training of Police Department officers and continued coordination with the City Attorney's Office. Since the ordinance imposes City administrative fines, the costs to administer will be borne primarily by the Police Department and City Attorney's Office, rather than the District Attorney and the Court system. This additional training work is true of any ordinance and the cost recovery provision

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can potentially reduce the costs associated with responses to underage gatherings which are already taking place.

In conclusion, the adoption of the proposed Social Host Responsibility ordinance will provide the Police Department with an additional tool to deal with underage gatherings in the City of San José in a manner that is clear and consistent with City administrative citation procedures and fine structure.

EVALUATION AND FOLLOW-UP

After the ordinance has been in place for one year, staff will report back through the appropriate Council Committee on the experience of implementing the ordinance.

POLICY ALTERNATIVES

In addition, to the proposed ordinance there are three policy alternatives that were considered, and ultimately rejected, by City staff relating to social host responsibility.

Alternative 1: Status Quo (Do not adopt a Social Host Ordinance)

Pros: No additional regulations imposed, existing civil and criminal penalties related to underage drinking still available to Police, no administrative burden in levying fines and recovering costs, no additional training required of Police.

Cons: Contrary to Council direction, does not provide clear civil penalty for social host, does not send clear signal prohibiting underage drinking gatherings.

Reason for not recommending: The proposed ordinance is clear and uncomplicated and adds an additional tool for law enforcement without being overly burdensome.

Alternative 2: Criminalize Social Host

Pros: Provides for stronger penalties against those hosting underage gatherings, would send strong signal to community regarding underage gatherings.

Cons: Any prosecution as a criminal offense requires a higher standard of proof. Also, criminalizing the behavior could end up working against the social support needed to change behaviors.

Reason for not recommending: Adding criminal penalties for responsible parties raises significant concerns and does not appear to further the desired outcome.

Alternative 3: Broaden Social Host Ordinance to include Marijuana use and other controlled substances.

Pros: Consumption of Marijuana and other controlled substances at parties by juveniles is cause for concern and seen as being increasingly common by many school administrators, would provide for use of administrative fines and cost recovery where criminal charges were not warranted.

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Cons: Existing state and federal laws deal extensively with the use of controlled substances; broadening the ordinance in this manner would complicate both the ordinance and enforcement and dilute the focus on underage drinking gatherings, broader than the direction from Council, California Medical Marijuana issues complicate enforcement.

Reason for not recommending: Maintaining a tight focus on underage alcohol consumption increases the potential effectiveness of the ordinance in creating the desired behavior change.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ✓ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

As described in greater detail in the background section a number of community forums and meetings have been held related to a potential Social Host Ordinance, including meetings with the Youth Commission, Schools/City Collaborative, and Neighborhoods Commission. Most participants were supportive of the proposed ordinance. Concerns or questions raised during the outreach included other jurisdictions' experience with implementing a Social Host ordinance, potential violation of civil liberties, the appropriateness of including Marijuana and the fairness of holding parents accountable for the actions of their children.

These questions and concerns raised during the outreach prompted additional research into other jurisdictions experience and careful consideration by City staff. The draft ordinance presented in this memorandum has been crafted with awareness of these concerns.

Bringing the ordinance to Council before the end of the fiscal year meant that there was not sufficient time for posting of the draft ordinance on the City's website beyond the normal sunshine requirement. No additional public meetings have been held to present the draft ordinance to the community.

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COORDINATION

This memorandum was coordinated with the City Attorney's Office and the Police Department.

COST SUMMARY/IMPLICATIONS

Approval of this ordinance would allow for recovery of costs associated with providing police, fire and other emergency response services to underage gatherings.

CEQA

Not a Project, File PP10-068(c), Municipal Code revisions involving no changes to the physical environment.

/s/

NORBERTO DUENAS

Deputy City Manager

For questions please contact Kip Harkness, Assistant to the City Manager, at (408) 535-8501.

Attachment: Draft Ordinance

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSE
AMENDING TITLE 10 OF THE SAN JOSE MUNICIPAL
CODE TO ADD A NEW CHAPTER RELATING TO SOCIAL
HOST RESPONSIBILITY TO DETER THE SERVICE OF
ALCOHOLIC BEVERAGES TO AND CONSUMPTION OF
ALCOHOLIC BEVERAGES BY UNDERAGE PERSONS AT
CERTAIN GATHERINGS**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Title 10 of the San José Municipal Code is amended to add a new chapter, to be numbered, entitled and to read as follows:

**CHAPTER 10.30
SOCIAL HOST RESPONSIBILITY
Part 1
General Provisions**

10.30.010 Purposes

The purposes of this Chapter are:

- A. To enforce laws prohibiting the consumption of alcoholic beverages by underage persons and the service of alcoholic beverages to underage persons, as well as to deter the service of alcoholic beverages to and consumption of alcoholic beverages by underage persons at certain gatherings; and
- B. To protect public health, safety, general welfare, and quiet enjoyment of property and properties neighboring these gatherings; and
- C. To reduce the costs of providing police, fire, and other emergency response services to

underage gatherings by imposing an administrative fee and/or responsibility for response costs against social hosts and landowners for the recovery of costs associated with providing law enforcement, fire, and other emergency response services to gatherings at which alcoholic beverages are served to or consumed by underage persons.

10.30.020 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

10.30.030 Alcoholic Beverage

"Alcoholic beverage" shall mean alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer that contain one-half of one percent (0.5%) or more of alcohol by volume; and is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

10.30.040 Property

"Property" shall mean a residence or other private property, rented residential premises, or rented commercial residences; including, but not limited to, a home, yard, garage, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.

10.30.050 Response Costs

"Response costs" shall mean the response charges set forth in Section 10.16.120 of this Code.

10.30.060 Responsible Person

“Responsible person” includes but is not limited to:

- A. The person(s) who owns, rents, leases, or otherwise has possession of the residence or other private property;
- B. The person(s) in immediate control of the residence or other private property; or
- C. The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the underage gathering.
- D. If the residence or other private property is rented or leased, the landlord or lessor is not covered by this Chapter unless they fall within the category of persons described under subsection B or C herein. A landlord or lessor can only be held responsible under subsection C if they have knowledge that the event is an Underage Gathering.

10.30.070 Residence or Other Private Property

“Residence or other private property” means a home, yard, apartment, condominium, hotel or motel room, other dwelling unit, a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.

10.30.080 Underage Gathering

“Underage Gathering” means a party or gathering of four (4) or more persons at a residence or other private property at which Alcoholic Beverages are being consumed or possessed by one (1) or more underage persons or one (1) or more Underage Persons are under the influence of alcoholic beverages.

10.30.090 Underage Person

"Underage person" shall mean any person under twenty-one (21) years of age.

**Part 2
Prohibition**

10.30.200 Underage Gatherings Prohibited

No person shall allow, permit, organize or participate in an Underage Gathering, nor shall any Property be the location of an Underage Gathering.

10.30.210 Exemptions

This Chapter shall not apply to:

- A. Activities protected by Article 1, Section 4, of the California Constitution; the California Alcoholic Beverage Control Act; or the First or Fourteenth Amendments to the United States Constitution.
- B. Any Property owned or leased by other governmental agencies and used for governmental purposes.

10.30.220 Response Costs

In addition to all other civil and administrative remedies, an Underage Gathering is deemed to be a "disturbance" and any Responsible Person is jointly and severally liable for Response Costs in accordance with Part 3 of Chapter 10.16 of Title 10 of this Code.

10.30.250 Remedies

A violation of this Chapter is enforceable through administrative citation and all other civil and

RD:EJM
4-20-12

administrative remedies available to the City.

PASSED FOR PUBLICATION of title this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk