



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: RICHARD DOYLE
City Attorney

SUBJECT: Social Host Ordinance Workload Assessment
DATE: December 3, 2010

RECOMMENDATION

Accept the Workload Assessment Report from the City Attorney and provide direction to the City Manager and City Attorney regarding the drafting of a Social Host Ordinance.

BACKGROUND

On November 10, 2010, the Rules Committee requested a workload assessment for a Social Host Ordinance that would impose liability on adults that host social events where alcohol is provided to minors. The City Attorney agreed to provide a work load assessment for the December 8, 2010 meeting of the Rules Committee.

ANALYSIS

The following work load analysis identifies major areas of staff work in order to draft an ordinance for Council approval. We have reviewed a few ordinances to determine the possible provisions to include in a Social Host Ordinance. Until the specifics of a proposed ordinance are developed it will not be possible to predict that any additional staff time to complete a final draft of any proposed ordinance.

A. Legal Analysis (estimated 15 to 20 hours)

Social host ordinances are designed to hold private individuals responsible for underage drinking that occurs in private property that they own, lease or otherwise control. Those ordinances do not apply to the sale or other distribution of alcohol in commercial settings such as a bar or restaurant. Any proposed ordinance should consider the following proposed components of an ordinance:

1. Definition of Gathering. Ordinances usually define the number of persons gathered in a setting where alcohol is being consumed or served to a minor that would be subject to the ordinance. The number can be as low at two persons so that the ordinance covers the maximum amount of such gatherings; however, most incidents that create the need for enforcement are made up of significantly larger number of people. As part of the definition of

“gathering” there should be a description of the type of locations that are subject to the ordinance such as private residence, motels, hotels or public facilities where social events are held.

2. Underage Drinking Strict Prohibition. Current law makes possession of alcohol illegal but when drinking occurs in a private residence it is difficult to prove who had possession unless actually observed by enforcement officer. If consumption is made illegal a law enforcement officer can administer an appropriate test of any minor present and if the test is positive the minor can be cited as well as the adult host.
3. Loud or unruly conduct. Some ordinances include a requirement that any gathering subject to the ordinance include some element of loud or unruly conduct. The Municipal Code prohibits such activity under Section 10.16.010 which prohibits disturbing the peace, quiet and comfort of any neighbor. Minors can be cited under that provision of the Municipal Code.
4. Responsible Person. Most ordinances provide that the responsible person is the owner of the property. Some ordinances limit when the ordinance is applicable to landlords as owners of property. However, other persons may also be included in that definition such as anyone who is present or in control of the property. It may also be possible to hold a parent or other adult accountable even if they were away from the property.
5. Penalties. Violations of a Social Host Ordinance may be enforced as a criminal or civil matter. Under a criminal penalty the citation could be an infraction or a misdemeanor. If it is to be treated as a civil matter it could be an administrative citation resulting in an administrative fine and/or a fee calculated to recover administrative cost or responding to the incident for repeated violations. The Municipal Code currently provides for cost recovery of disturbances of the peace under Section 10.16.130 (c).
6. Hearing Process. An ordinance can include an appeal procedure specific to this ordinance or refer to an existing appeal procedure in the Municipal Code.

In addition to addressing the issues raised above, any proposed ordinance will need to address certain constitutionally protected activity such as consumption and possession of alcohol by minors for religious practices.

The Rules Committee can provide direction to the City Attorney regarding the components mentioned above or can direct the City staff to hold community meetings before it provides direction to the City Attorney. In addition, the City Attorney will need to review various Social Host Ordinance adopted in other jurisdictions to determine best practices with regard to any proposed components of such an ordinance.

B. Community Outreach and Conducting of Community Meetings (3 months minimum based on commission meeting frequency)

Most of the ordinances were adopted by the legislative bodies after extensive community outreach. Councilmember Pyle suggested that any proposed ordinance be presented to the Youth and the Neighborhood Commissions. The City Council directed staff to develop a community outreach plan to ensure that there is a formal process for community input and participation. The City Council's open government policy titled, "Community Engagement Process for Significant City Policy Actions," sets forth community outreach requirements and protocols for new Council policies and/or ordinances. More specifically, the "Community Engagement Process" for significant policy actions directs that at least two community meetings be "held at meaningful points in the process during which recommendations for the proposed policy action are still under development," as well as a final community meeting "after the development of final recommendations at which those recommendations will be presented to the public."

Similar to other policy processes, information about all meetings related to the Social Host Ordinance have to be made available through various and extensive communication efforts to engage community participation, which includes:

- Email/direct mail to individuals and groups who spoke at past Council and Committee meetings and/or have expressed an interest in participating in community input sessions. A contact list of these stakeholders has been developed that also includes businesses that advertise on local newspapers, hospices, medical societies/groups, etc.
- Distribution of information to neighborhood associations and groups through the City's Strong Neighborhoods Initiative and individual Council Offices.
- Insertion of information in the City Manager's Weekly Report.
- Posting of information on the City's web site and television channel, at community centers and libraries, and in at least one general circulation or community English language newspaper publication.

In addition to the communication above, staff would engage the following groups:

- Neighborhood Commission
- Youth Commission
- Schools and City Collaborative
- Targeted Community Outreach

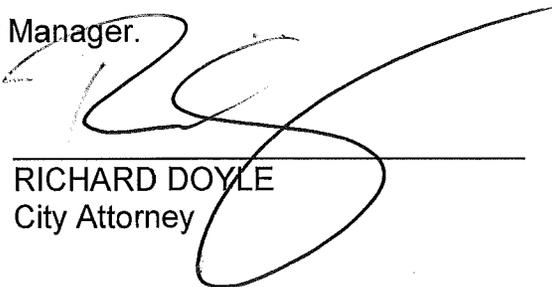
It should be noted that there are other competing priorities for staff resources to conduct this outreach and there are no police staff specifically assigned to conduct this type of outreach; therefore, it would be a collateral duty that competes with a staff members core set of responsibilities. In preparation for the outreach meetings there would be a significant amount of time dedicated to research and analysis conducted by staff. With this in mind, reasonable timelines for milestones should be considered to ensure that staff has the capacity to do the good work that is expected by the community.

C. Administrative Reimbursement Process.

During discussion by City staff with Council District 10 staff, the concept of seeking reimbursement for the City's cost of having the Police Department respond was also raised. Given the downsizing nature of our organization, the Police Department budget and fiscal staff would need to determine how, if possible, it can absorb this task with less resources and the "cost/benefit" associated with this unique feature of a Social Host Ordinance.

COORDINATION

This memo has been coordinated with the City Manager.



RICHARD DOYLE
City Attorney

cc: City Council
Debra Figone

For questions please contact Ed Moran, Assistant City Attorney, at 408-535-1920;
Deanna Santana, Deputy City Manager at 408 535-8280 and
Chris Moore, Acting Chief of Police at 408-277-4212.

Exhibit A

Inventory of Select and Significant Ordinances

1. Main Street/Alum Rock Zoning Standards
2. Sign Code Major Update – Second Phase Adoption
3. Landscape Ordinance (ESD lead)
4. Medical Marijuana (pending CC direction on 12/13/10)
5. Gift Ordinance Cleanup-general cleanup
6. Independent Police Auditor-Clarifying IPA participation in review of officer involved shootings.
7. Amendment to Lobbyist Ordinance_ communications with lobbyists
8. San Pedro Square Kiosk Ordinance-
9. Tobacco Retail License Ordinance
10. Amendment to Taxicab Ordinance for Alternative Fuel Vehicles
11. Downtown Cost Sharing Ordinance amendments consistent with SB 731
12. Tow Car Ordinance amendments to be consistent with VC 22658
13. Carryout Plastic Bag Ordinance
14. Commercial Waste Franchise Ordinances
15. Repeal of Bicycle Licensing Ordinance
16. Comprehensive Special Events Ordinance-redraft to address constitutional issues
17. Residential Conversion Notice Ordinance- notification to neighbors when residential project converts from for sale to rental and vice versa
18. Title 16 for Gaming Control licensing and work permits based on City Auditor's audit.
19. Tree Removal Streamlining Ordinance
20. Development Agreement Ordinance- make it codified rather than uncoded and make some amendments
21. Massage Ordinance
22. Bail Bonds Ordinance Analysis
23. Small Non-Residential Building Additions, Eliminate Percentage Increase
24. Off-Sale of Alcohol at Grocery Stores Streamlining
25. Off-Sale of Alcohol Process Streamlining (Planning Commission recommendation to Council instead of mandatory denial)
26. Noise Performance Standards Update
27. Green Building Retrofit Ordinance
28. Lighting on Private Property Policy Changes
29. Streamlined Conservation Area Ordinance (Distinctive Neighborhoods)
30. City Landmark Criteria to Align with California Register
31. Parking Requirements- delete/modify for parks/playgrounds
32. Zoning Districts to Align with Transit Corridor Residential
33. Multi-Family District Update

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- 34. Streamlining of Retaining Walls, Fence Heights
- 35. Single Family Permit Process Update
- 36. R-1 Residential Streamlining/Clean Up
- 37. Condo Conversion Process Update
- 38. North San Jose Form Based Code
- 39. Height Exception for Amateur Radio Antennae

Note: Partial List of new ordinances or ordinance changes that have been requested to reflect the City Council's priorities