

CITY OF SEBASTOPOL
CITY COUNCIL
STAFF REPORT

Meeting Date: October 30, 2018
To: Honorable Mayor and Honorable City Councilmembers
From: Police Chief James Conner
Subject: Approval of Waiving of Second Reading and Adoption of Ordinance #1114
Amending Municipal Code Chapter 810, Social Host Ordinance
Recommendation: Approval of Second Reading, Waiving of Further Reading and Adoption of
Ordinance 1114
Funding: Currently Budgeted: _____ Yes _____ No X N/A
Net General Fund Cost: _____
Amount: _____

Introduction:

At its October 16, 2018, City Council Meeting, the City Council received the staff report, conducted a public hearing, and discussed the ordinance Amending Municipal Code Chapter 810, Social Host.

Discussion:

Following the deliberations, the Council introduced and waived the first reading of Ordinance No. 1114.

As discussed at this meeting, Sebastopol Municipal Code Section 8.10 SOCIAL HOST ORDINANCE is amended to include cannabis products possessed for non-medicinal purposes, in recognition that youth access to the substance is equally contrary to the public health and safety as is alcohol. It's inclusion in the ordinance would allow for those in control of a property where youth access is allowed to be cited for violation of this code in the same way they are currently for allowing youth access to alcohol.

The ordinance is now presented for adoption. The Ordinance will go into effect in 30 days after adoption.

Recommendation:

That the City Council approve Second Reading; waiving of further reading, and Adoption of Ordinance 1114

Attachment:

Ordinance No. 1114

ORDINANCE NUMBER 1114

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
ADOPTING A NEW CHAPTER 8.10 ENTITLED "SOCIAL HOST ORDINANCE"

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEBASTOPOL AS FOLLOWS:

Title 8 of the Sebastopol Municipal Code is hereby amended by adding a new Chapter 8.10 entitled "Social Host Ordinance" to read as follows:

CHAPTER 8.10
SOCIAL HOST ORDINANCE

8.10.010	Title
8.10.020	Findings and Purpose
8.10.030	Definitions
8.10.040	Duty of the Social Host
8.10.050	Prohibition of Underage Gatherings on Private Property and Public Premises
8.10.060	Exception
8.10.070	Hosting by Juvenile
8.10.080	Enforcement
8.10.090	Penalties for Violations
8.10.100	Recovery of Response Costs
8.10.110	No Mandatory Duty of Care
8.10.120	Statutory Severability
8.10.130	CEQA

8.10.010 Title.

This ordinance shall be known as the "Social Host Ordinance" of the City of Sebastopol.

8.10.020 Findings and Purpose.

The City Council of the City of Sebastopol does hereby find that:

- (1) The occurrence of underage social gatherings, defined in this ordinance as a gathering of two or more underage persons on private or public property where alcoholic beverages or cannabis products are consumed by underage persons, is harmful to such persons and a threat to public welfare, health and safety. The Surgeon General's Call to Action (2007) is hereby incorporated by reference, to further establish the health, safety and public welfare concerns that exist with underage drinking or cannabis use.

(2) Reliable research indicates that underage consumption of alcohol is a contributing factor in the three leading causes of teenage deaths: 1) unintentional injury, 2) homicide and 3) suicide. Underage drinking is associated with alcohol abuse and a negative impact on the developing brain of youth. Likewise, it is associated with violent crimes including sexual offenses, DUI and alcohol-related traffic deaths. Underage drinking is a common factor in public disturbances, vandalism and physical altercations, all of which may require intervention by local law enforcement.

(3) Research has identified easy access to alcohol or cannabis products and permissive attitudes as two key factors that contribute to underage drinking or cannabis use.

(4) Local, state and national studies have established that underage youth most commonly procure alcohol or cannabis from social sources (parties, friends, homes) and others who purchase it for them.

(5) Underage social gatherings frequently occur on private or public property where adults who own or control the property have failed to ensure that alcoholic beverages or cannabis products are neither served to, nor consumed by underage persons. Furthermore, there are times when parents or other adults are present at the social gathering who condone the underage drinking or cannabis use and provide the alcohol or cannabis products.

(6) Problems associated with underage social gatherings on private or public property are difficult to prevent and deter unless the Sebastopol Police Department has the legal authority to direct the social host to disperse the gathering and to cite the social host.

(7) Law enforcement personnel have in the past been required to respond to underage social gatherings on private and public property where alcoholic beverages or cannabis products are provided to and consumed by underage persons. Such calls for service can result in a disproportionate expenditure of public safety resources, and delay official responses to other calls.

(8) The City Council of the City of Sebastopol, pursuant to the City's police powers under Article XI, sections 3 and 5 of the California Constitution, and the City Charter established pursuant to such sections, has the authority to enact and enforce laws that promote the public health, safety and general welfare of its residents.

(9) An ordinance that imposes liability with penalties on social hosts is necessary to deter and prevent such gatherings. Social hosts or anyone who organizes, supervises, aids, conducts, permits, or controls the underage social gathering need not be present at such gathering to incur liability under this ordinance.

(10) The purposes of this ordinance are to:

- a) protect the public health, safety and welfare by deterring the service to and consumption of alcoholic beverages or cannabis products by underage persons; and
- b) to reduce the cost to the public of providing police response services. These purposes are achieved by issuing a criminal citation which requires the social host to pay a fine and fees for the actual costs incurred by the City.

The City Council, therefore finds that underage social underage gatherings held on private or public property are a threat to the public peace, health, safety and general welfare, and a public nuisance as they affect the entire Sebastopol community as well as the neighborhoods in which they occur.

8.10.030 Definitions.

For the purposes of this chapter, the following definitions apply:

- (a) "Alcohol." The definition of "alcohol" in Section 23003 of the California Business & Professions Code, as amended from time to time, shall apply to this chapter. As of the introduction of this chapter, section 23003 defines "alcohol" to mean "ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced."
- (b) "Alcoholic beverage." The definition of "alcoholic beverage" in Section 23004 of the California Business & Professions Code, as amended from time to time, shall apply to this chapter. As of the introduction of this chapter, section 23004 defines "alcoholic beverage" to mean alcohol, spirits, liquor, wine, beer that contains one-half of one percent or more alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances."
- (c) "Cannabis" means all parts of the plant Cannabis Sativa Linnaeus, Cannabis Indica, or Cannabis Ruderalis, or any other strain or varietal of the genus Cannabis that may exist or hereafter be discovered or developed that has psychoactive or medicinal purposes. "Cannabis" also means marijuana as defined by section 11018 of the Health and Safety Code, and amended by the California Control, Regulate, and Tax Adult use of Marijuana Initiative, and as defined by other applicable state laws. "Cannabis" does not mean "industrial hemp" as defined by section 11018.5 of the Health and Safety Code. Cannabis is classified as an agricultural product separately from other agricultural crops.
- (d) "Cannabis Product" means cannabis or a cannabis product, respectfully, intended to be sold for either medical or adult use.
- (e) "City" means the City of Sebastopol.
- (f) "Juvenile" means any person under eighteen years of age.

- (g) "Private or public property" means any location such as a residence and adjoining property, an apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, park or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, or used with or without permission or compensation.
- (h) "Response costs" means the costs associated with responses by law enforcement to underage social gatherings including but not limited to:
- 1) salaries and benefits of law enforcement personnel for the amount of time spent responding to, remaining at, or otherwise dealing with unruly or underage gatherings
 - 2) the cost of any medical treatment to or for any law enforcement personnel injured responding to, remaining at or leaving the scene of an underage social gathering;
 - 3) the cost of repairing any City equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of an underage social gathering; and
 - 4) any costs recoverable in accordance with California Civil Code section 1714.9.
- (i) "Social Host" means any person or persons with a right of possession of private or public property at which an underage social gathering occurs, including, but not limited to the following:
- 1) the owner of record as of the time of the underage social gathering or tenant or lessee of the property;
 - 2) any person who exercises control over the private or public property at the time of the underage social gathering;
 - 3) anyone who organizes, supervises, officiates, aids, conducts, allows, permits or controls the underage social gathering.
 - 4) A social host need not be present at such gathering to incur liability under this ordinance.
- (j) "Underage social gathering" means a party or gathering of two or more persons held on private or public property in the City where alcoholic beverages or cannabis products are consumed by any underage person.
- (k) "Underage person" means any person under twenty-one years of age.

8.10.040 Duty of Social Host.

It is the duty of the Social Host to take reasonable steps to prevent underage access to alcoholic beverages or cannabis products on private and public property. Such steps include, but are not limited to: controlling the quantity of alcoholic beverages or cannabis products present at the gathering; verifying the age of persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure that underage persons do not consume alcoholic beverages or cannabis products while at the gathering; and supervising the activities of underage persons at the gathering.

8.10.050 Prohibition of Underage Social Gatherings on Private and Public Property.

It is unlawful and a public nuisance for any person to knowingly host an underage social gathering on private or public property in the City. For purposes of this chapter, a person knowingly hosts an underage social gathering whenever the social host is aware that an underage person has consumed an alcoholic beverage or cannabis product or reasonably should have been aware had the social host taken reasonable steps to prevent consumption of alcoholic beverages or cannabis products by underage persons in accordance with section **8.10.040**. Violation of this section by any person is an infraction in addition to liability for recovery of response costs in accordance with section **8.10.100**, and any other applicable penalties under applicable law.

8.10.060 Exception.

This chapter does not apply to conduct involving the use of alcoholic beverages that is protected by Article I, section 4 of the California Constitution.

8.10.070 Hosting by Juvenile.

In the event that a juvenile hosts an underage social gathering at a residence or on other private or public property in the City in violation of this chapter, the parents or guardians of that juvenile may be jointly and severally liable for any penalties and response costs imposed pursuant to this chapter.

8.10.080 Enforcement.

Enforcement of this ordinance shall be the responsibility of the Chief of Police or his/her designee.

8.10.090 Penalties for Violations.

Any person violating any of the provisions of this ordinance shall be deemed guilty of an infraction.

8.10.100 Recovery of Response Costs.

When the police make an initial response to an underage social gathering on private or public property and a police officer issues a citation for violation of this chapter, the officer shall, in writing, inform any responsible person(s) at the property or location that:

- 1) An underage social gathering exists; and
- 2) The social host(s) will be charged for any response costs incurred for subsequent responses to the property for hosting an underage social gathering within a 12-month period.

This warning will be given to all social hosts at the time of the first response to an underage social gathering where a citation is issued for violation of this chapter. Within 30 calendar days of the initial citation, a written warning will be delivered via certified mail to the owner of record of the involved property. When a police officer responds to an underage social gathering at a residence or other private property within the City within 12 months of a citation and warning given to social hosts at the same property, and such officer issues a second or subsequent citation pursuant to this chapter, all responsible persons shall be jointly and severally liable for the City's response costs concerning such second or subsequent underage social gathering, but only to the extent that the identified social host(s) concerning the first citation at such property remain the social host(s) for the second or subsequent citation at such property.

8.10.110 No Mandatory Duty of Care.

This chapter is not intended to impose, and shall not be construed or given effect in a manner that imposes upon the City, or any officer, employee, agent, or representative of the City, a mandatory duty of care toward persons or property within or without the City limits, so as to provide a basis of civil liability for damages, except as may otherwise be imposed by law.

8.10.120 Statutory Severability.

If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Sebastopol hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

8.10.130 CEQA.

The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA"), pursuant to Sections 15061(b)(3) (no possibility that the activity may have a significant impact on the environment) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

This ordinance shall become effective thirty (30) days after the date of its adoption by the Sebastopol City Council.

The City Clerk is hereby directed to publish or post this ordinance or a synopsis for the period and in the manner required by Section 45 of the City Charter or as otherwise required by law.

Approved for First Reading and Introduction on this 16th day of October, 2018.

Approved for Second Reading and Adoption on this 30th day of October, 2018.

VOTE:

Ayes:

Noes:

Abstain:

Absent:

APPROVED: _____

Mayor Patrick Slayter

ATTEST:

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM:

Larry McLaughlin, City Attorney