

ORDINANCE NO. 17-10

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN ADDING SECTIONS TO CHAPTER 130 OF THE AUBURN MUNICIPAL CODE REGARDING DISTURBANCE CALL BACK COST RECOVERY AND SOCIAL HOST ACCOUNTABILITY

THE CITY COUNCIL OF THE CITY OF AUBURN DOES ORDAIN AS FOLLOWS:

Section One: Code Adoption. The following Sections are hereby added to Chapter 130 entitled "General Offenses" of the Auburn Municipal Code to read as follows:

DISTURBANCE CALL BACK COST RECOVERY

§ 130.040 PURPOSE AND INTENT.

The City of Auburn finds and determines police officers, in response to complaints, are often required to make several return trips to a location of a disturbance causing loud and unreasonable noise in order to disperse uncooperative participants. The return of police officers to a location constitutes a drain of personnel and resources often leaving other areas of the city without minimal levels of police protection. This creates a significant hazard to the safety of the police officers and to the public in general.

§ 130.041 DEFINITIONS.

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

DISTURBANCE shall include parties, gatherings, and any other activities causing loud and unreasonable noise so as to constitute a threat to the peace, health, safety, or general welfare of the public.

COST OF POLICE SERVICES include the salaries of the responding police officers, at the salary then in effect for each classification of each individual officer, for the amount of time actually spent in responding to or remaining at the disturbance; appropriate overhead; the actual cost of any medical treatment to injured officers; and the cost of repairing any damaged city equipment or property.

PERSON RESPONSIBLE FOR THE DISTURBANCE or ***RESPONSIBLE PERSON*** is the person causing the disturbance, the person who owns or is

in charge of the property where the disturbance takes place, and the person who organized the event or activity causing the disturbance. If the person responsible for the disturbance is a minor, then the parents or guardians of that minor will be jointly and severally liable for the costs incurred for police services.

§ 130.042 LIABILITY FOR COST OF POLICE SERVICES AT DISTURBANCES REQUIRING MORE THAN ONE RESPONSE.

(A) When police personnel respond to any location due to a disturbance, the responding officers may issue a written warning to the responsible person. The notice shall state that if police department personnel are required to return to the same location within the following twelve hour period because of similar or continuing disturbances, such further response shall constitute special security services. Further, this warning shall state that the responsible person may be charged for the cost of providing such special security services. The warning shall be offered for signature to the responsible person. The warning shall be signed by the responsible person, or, if the responsible person refuses to sign, the words "refused to sign" shall be entered on the warning acknowledging receipt of the warning. A copy of the warning shall be left with the responsible person.

(B) If a second or subsequent response is required, police department personnel shall have the responsible person sign a second response voucher. If issued a second response voucher, the responsible person shall be charged for the cost of police services and any medical treatment and damages to equipment. If the responsible person refuses to sign the voucher, the words "refused to sign" shall be entered on the voucher acknowledging the occurrence of the second response. A copy of the voucher shall be left with the responsible person.

§ 130.043 COST OF POLICE SERVICES.

The cost of police services charged to persons responsible for a disturbance under this chapter shall be calculated using the cost reasonably borne to provide the service and actual cost of medical treatment and damages to equipment. The amount charged shall be deemed a debt to the city of the person(s) responsible for the disturbance and, if minors, their parents or guardians. Any person owing money shall be liable in an action brought in the name of the city for recovery of such amount, including reasonable attorney fees.

§ 130.044 EFFECT ON CRIMINAL PROSECUTION.

Nothing in the adoption or administration of this chapter shall be construed as affecting the ability to initiate or continue concurrent or subsequent criminal prosecution for any violation of the provisions of this code or any state law arising out of the same circumstances necessitating the application of this chapter.

Section Two: Code Adoption. The following Sections are hereby added to Chapter 130 entitled "General Offenses" of the Auburn Municipal Code to read as follows:

SOCIAL HOST ACCOUNTABILITY

§ 130.080 PURPOSE AND INTENT.

The purpose of this section is to protect the public health, safety, and general welfare of people and premises in the city, including the quiet enjoyment of property, by enhancing the ability of law enforcement to deter the consumption of alcohol, marijuana or other controlled substances by minors and to hold adult, minor, or juvenile hosts accountable for ensuring minors are not consuming alcoholic beverages, marijuana, or other controlled substances.

Instances of large parties and disturbances both at rental facilities and private homes often disturb the public peace, safety, and welfare of members of the community. These incidents can also jeopardize the welfare and safety of those in attendance due to assaultive and/or destructive behavior.

§ 130.081 DEFINITIONS.

The words and phrases used in this chapter have the meanings set forth in this section.

ALCOHOL shall have the same meaning as in California Business and Professions Code section 23003 or any successor section.

ALCOHOLIC BEVERAGE shall have the same meaning as in California Business and Professions Code section 23004 or any successor section.

CONTROLLED SUBSTANCE means a drug or substance whose possession and use are regulated under the California Controlled Substances Act (Health and Safety Code section 11000 et seq.). Such term does not include any drug or substance for which the individual found to have consumed or

possessed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription.

GATHERING is a party, or event, where a group of three or more underage persons have assembled or are assembling for a social occasion or social activity.

JUVENILE means any person under eighteen years of age.

LEGAL GUARDIAN means:

1. A person who, under court order, is the guardian of a minor; or
2. A public or private agency with whom a minor has been placed by the court.

MINOR means any person less than twenty-one years of age as defined by California Business and Professions Code section 25662.

PARENT means a person who is a natural parent, adoptive parent, foster parent, or step-parent of a minor.

PREMISES means any non-publicly owned place, land or building used for habitation or social events.

SOCIAL HOST means any person having ownership or control of a premises, or is responsible for organizing a gathering, who knowingly permits or allows, tacitly or otherwise, a gathering or unruly gathering, as those terms are defined in this section, to occur on private property.

UNRULY GATHERING shall mean a party, event or gathering where two or more underage persons are present at a residence or other private property in which alcoholic beverages are being consumed or possessed by any minor and upon which unruly conduct occurs. Illustrative of such unruly conduct is excessive noise, excessive traffic, obstruction of public streets by crowds or vehicles, public drunkenness or unlawful public consumption of alcohol or alcoholic beverages, assaults, batteries, fights, domestic violence or other disturbances of peace, vandalism, litter, and any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare.

§ 130.082 HOSTING, PERMITTING, ALLOWING A GATHERING WHERE MINORS CONSUME ALCOHOLIC BEVERAGES, MARIJUANA, OR OTHER CONTROLLED SUBSTANCES PROHIBITED.

- (A) Except as permitted by state law, it is unlawful for any person having ownership or control of any premises, or who is responsible for a gathering or unruly gathering, to host, knowingly permit, or allow, tacitly or otherwise, a gathering to take place at said premises, where at least one minor possesses or consumes an alcoholic beverage, marijuana or other controlled substance whenever the person having ownership or control of the premises either knew, or reasonably should have known, that a minor possessed or consumed an alcoholic beverage, marijuana or other controlled substance.
- (B) Except as provided in below, whenever a person having ownership or control of a premises is on the premises and permits or allows a minor to possess or consume any alcoholic beverage, marijuana or controlled substance thereon, it shall be prima facie evidence that such person had the requisite knowledge specified in subsection (A).
- (C) A social host shall be deemed to have constructive knowledge that a minor has consumed or possessed alcoholic beverages, marijuana or controlled substances if the social host did not take reasonable steps to prevent the consumption or possession of alcoholic beverages, marijuana and controlled substances by minors.
- (D) A social host shall not be in violation of this section if he or she seeks immediate assistance from any law enforcement agency to remove any person who refuses to abide by the social hosts' performance of the duties imposed by this chapter, or to terminate the gathering because the social host has been unable to prevent minors from consuming or possessing alcoholic beverages, marijuana or other controlled substances despite having taken reasonable steps to do so. A social host shall not be in violation of this section if he or she seeks medical assistance to provide care for a person in immediate danger due to the accidental or intentional overdose of alcohol or a controlled substance.
- (E) When law enforcement or other emergency response providers respond to a gathering at which a minor has consumed or is consuming alcoholic beverages or a controlled substance, all social hosts shall be jointly and severally liable.
- (F) This section shall not apply to any location or place regulated by the California Department of Alcoholic Beverage Control.

(G) This section shall not apply to a parent or legal guardian who provides an alcoholic beverage at a family gathering to a minor under the parent or legal guardian's care or to any person who provides an alcoholic beverage to a minor as part of a legally protected religious activity.

§ 130.083 UNRULY GATHERINGS-PUBLIC NUISANCE.

It shall be unlawful and a public nuisance to host, permit, or allow, tacitly or otherwise, an unruly gathering on any private property.

§ 130.084 ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS.

(A) Any person found to be in violation of any provision of this chapter shall be subject to administrative enforcement as set forth in Chapter 10, Section 10.80 et seq. of this code. The enforcement officers for this chapter shall be City of Auburn police officers and code enforcement officers.

(B) The civil penalty for any violation of this chapter shall be a fine of up to one thousand dollars per occurrence.

(C) The civil fine prescribed does not preclude liability for public safety response costs assessed pursuant to this code.

(D) If the social host is a juvenile, the parents or legal guardians of the juvenile shall be responsible for the civil penalty imposed under this section.

(E) The responsible person may perform twenty-four hours of community service and pay city administrative fees, if any, as an alternative to paying the civil penalty with the prior written consent and approval of the Director of Public Safety or his or her designee.

(F) The parents or guardians of a juvenile found to have hosted a gathering in violation of this chapter may also request to have that juvenile serve the required hours of community service as described in subsection (E), above, and pay city administrative fees, if any, as an alternative penalty to paying the applicable civil penalty.

(H) The Director of Public Safety or his or her designee shall retain the discretion to approve the community service requested by the responsible person. Upon approval of the Director of Public Safety or his or her designee to perform community service, the responsible person shall complete the required hours within one year of approval, and shall submit proof of completion to the Director of Public Safety or his or her designee. Failure to receive approval to perform community service or failure to complete the required hours of service shall result in imposition of the applicable civil

penalty, which is immediately payable. No reduction in the penalty is authorized for completion of less than the required hours of community service as set forth in subsection (E) unless approved by the City Manager or his or her designee.

(H) Community service will only be approved for the first citation issued within a one-year period. Subsequent violations within one year from the first violation will be subject to civil penalties.

§ 130.085 ADMINISTRATIVE RULES AND REGULATIONS.

The Director of Public Safety or his or her designee may adopt administrative rules and regulations which are consistent with the provisions of this chapter for the purpose of implementing the same.

§ 130.086 EFFECT ON CRIMINAL PROSECUTION.

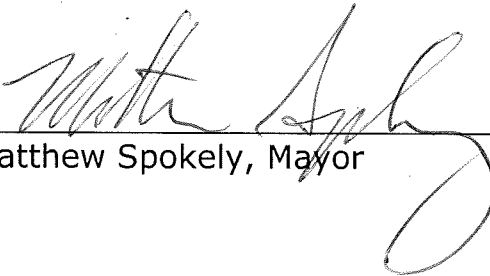
Nothing in the adoption or administration of this chapter shall be construed as affecting the ability to initiate or continue concurrent or subsequent criminal prosecution for any violation of the provisions of this code or any state law arising out of the same circumstances necessitating the application of this chapter.

Section Three: California Environmental Quality Act. The City Council has considered all of the evidence in the record, including the staff reports, the testimony received during the meeting on the matter held by the City Council, and hereby determines that the adoption of this Ordinance will not have a significant effect on the environment. This Ordinance is therefore exempt from California Environmental Quality Act review pursuant to Title 14, Section 15061(b)(3) of the California Code of Regulations.

Section Four: Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance or the rules adopted hereby. The City Council of the City of Auburn hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section Five: Publication and Effective Date. This ordinance shall take effect 30 days after final adoption. The City Clerk shall certify to the passage and adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.

DATED: July 24, 2017



Matthew Spokely, Mayor


ATTEST:



Amy Lind, City Clerk

I, Amy Lind, City Clerk of the City of Auburn, hereby certify that the foregoing ordinance was duly passed at a regular meeting of the City Council of the City of Auburn held on the 24th day of July 2017 by the following vote on roll call:

Ayes: Kirby, Berlant, Maki, Powers, Spokely
Noes:
Absent:
Abstain:



Amy Lind, City Clerk