

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Police

AGENDA DATE: September 20, 2016—First Reading
October 4, 2016—Public Hearing

CONTACT PERSON/PHONE: Assistant Chief Michelle Gardner, 212-4301

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: NO. 2: Set the Standard for a Safe and Secure City

SUBJECT:

An ordinance amending Title 9 (Health and Safety), by adding Chapter 9.20 (Social Host Accountability Ordinance), which allows for a civil penalty imposed upon a responsible adult for a gathering where alcohol is provided to minors; the penalty being as provided in Section 9.20.070 of the El Paso City Code.

BACKGROUND / DISCUSSION:

On April 19, 2016, City Council discussed and directed the City Attorney's Office to research and implement a civil social host ordinance to protect the public health and safety and reduce underage drinking.

SELECTION SUMMARY: N/A

PROTEST: N/A

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? Yes or No

If yes, select the applicable districts.

All Districts

PRIOR COUNCIL ACTION:

City Council discussed the issue and provided direction on April 19, 2016.

AMOUNT AND SOURCE OF FUNDING: N/A

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 9 (HEALTH AND SAFETY), BY ADDING CHAPTER 9.20 (SOCIAL HOST ACCOUNTABILITY ORDINANCE), WHICH ALLOWS FOR A CIVIL PENALTY IMPOSED UPON A RESPONSIBLE ADULT FOR A GATHERING WHERE ALCOHOL IS PROVIDED TO MINORS; THE PENALTY BEING AS PROVIDED IN SECTION 9.20.070 OF THE EL PASO CITY CODE.

WHEREAS, Chapter 106 of the State of Texas Alcoholic Beverage Code makes it unlawful for a person under the age of twenty-one (21) years to purchase or attempt to purchase, or consume alcoholic beverages and makes it unlawful for any person to sell or provide any alcoholic beverage to any person under the age of twenty-one (21) years; and

WHEREAS, according to the El Paso Police Department, in 2015, local law enforcement issued 311 citations to minors in possession of alcohol and minors who misrepresented their age; and

WHEREAS, the intent of this chapter is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. Persons who actively or passively aid, abet, or allow gatherings involving underage drinking may be held liable for the nuisances created by such gatherings by the imposition of civil fine(s) for such violations associated with responding to such gatherings;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

SECTION 1. That Title 9 (Health and Safety), be amended to add Chapter 9.20 (Social Host Accountability Ordinance) to the City of El Paso City Code as follows:

Chapter 9.20

SOCIAL HOST ACCOUNTABILITY ORDINANCE

Sections:

- 9.20.010 Title.**
- 9.20.020 Legislative purpose.**
- 9.20.030 Legislative findings.**
- 9.20.040 Definitions.**
- 9.20.050 Prohibitions of gatherings involving underage drinking.**
- 9.20.060 Protected activities.**
- 9.20.070 Violation(s)—Civil penalties.**
- 9.20.080 Enforcement.**
- 9.20.090 Reserved.**
- 9.20.100 Hearings on the imposition of civil penalty — Appeals.**
- 9.20.110 Billing and civil penalty — Debt to city — Enforcement.**

9.20.010 Title.

This chapter shall be known as the "Social Host Accountability Ordinance".

9.20.020 Legislative Purpose.

The purposes of this chapter are to:

- A. Protect the public health, safety, and general welfare;
- B. Promote the reduction of underage drinking by imposing a civil fine on persons or entities responsible for gatherings where alcohol is consumed by, served to or in the possession of underage persons; and
- C. Facilitate the enforcement of laws prohibiting the serving of, consumption of, or possession of alcoholic beverages by underage persons.

9.20.030 Legislative findings.

The recitals set forth above are incorporated herein as legislative findings by the El Paso City Council.

9.20.040 Definitions

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

- A. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits or wine, or whatever source by whatever process produced.
- B. "Alcoholic beverage" means beer, alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted, or as defined in the Texas Alcoholic Beverage Code, as amended.
- C. "Gathering involving underage drinking" means a party or gathering of two or more persons at a residence or other private property or rented public property upon which any minor, is served, possesses, or consumes one or more alcoholic beverages.
- D. "Minor" means any person under twenty-one years of age, or as otherwise defined by the Texas Alcoholic Beverage Code.

9.20.050 Prohibition of gatherings involving underage drinking.

A person commits a violation under this chapter if the following conditions are met:

- A. he facilitates underage drinking, except as allowed by the laws of the State of Texas; or
- B. he is present while underage drinking is taking place and has actual knowledge of the fact that underage drinking is taking place, except as allowed by the laws of the State of Texas; or

- C. he allows underage drinking, except as allowed by the laws of the State of Texas, at property which is under his care, custody or control; or
- D. he is the person who paid for the rental of any premises, to include, but not be limited to, the following premises, and underage drinking takes place on that premises, except as allowed by the laws of the State of Texas:
 - 1. a hotel or motel room;
 - 2. an assembly hall or meeting room;
 - 3. a common room of a dwelling unit used for a party (i.e. recreation room of an apartment building);
 - 4. a site in a privately owned campground;
 - 5. privately owned vacant lot;
 - 6. privately owned agricultural land; or
 - 7. privately owned rural land whether occupied in whole or in part as a dwelling, or for a social function, and whether owned, leased, rented or used without compensation.
- E. **Affirmative Defense:** A person does not commit a violation under this chapter if a gathering involving underage drinking occurs on premises under that person's care, custody or control and said gathering was the result of a criminal trespass.

9.20.060 Protected activities.

This ordinance shall not apply to activities protected by the First or Fourth Amendments to the United States Constitution.

9.20.070 Violation(s)—Civil Penalties.

It shall be a civil violation to violate Section 9.20.050.

A. Civil Penalty.

- 1. A first violation of this Chapter shall result in a Notice of Violation with a two hundred and fifty (\$250) civil penalty.
- 2. A second violation shall result in a Notice of Violation with a five hundred dollar (\$500) civil penalty.
- 3. A third or subsequent violation shall result in a Notice of Violation with a one thousand dollar (\$1000) civil penalty.

B. In the event that the person who is in violation of this Chapter is a juvenile, as defined by the laws of the State of Texas, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the civil violation. For a first violation, a parent or guardian who is not present at the residence or other private property at the time of the violation may be:

- 1. Notified through a written warning that a violation of this chapter occurred; and,
- 2. Shall only be liable for a second and any subsequent offense that occurs at the property.
- 3. Any violation that was overturned on appeal shall no longer count as a violation.

- C. A person who commits a violation of this chapter who does not reside at a residence or other private property where a gathering involving underage drinking occurs may be:
 - 1. Notified through a written warning of any gathering involving underage drinking that occurs at property he owns or controls; and,
 - 2. Only liable for a second and any subsequent offense that occurs at the property.

9.20.080 Enforcement.

- A. Peace officers employed by the City of El Paso are hereby authorized to issue a Notice of Violation and written warnings for a violation of this chapter.
- B. Issuance of written violation. When a law enforcement officer makes a response to a gathering involving underage drinking, the officer may issue a Notice of Violation for violation of this chapter to any person who commits the violation.
- C. Subsequent delivery of a Notice of Violation and warnings. A city police officer may issue a Notice of Violation or a warning to any persons who commits the violation as identified by law enforcement within twenty days of the violation.
- D. The Police Chief or designee shall provide the person who commits the violation by personal delivery or United States Postal Service mail within twenty (20) days of the violation. The notice shall contain the following information:
 - 1. The name(s) of the person(s) being assessed the penalty;
 - 2. The address where the gathering involving underage drinking occurred;
 - 3. The date and time of the incident;
 - 4. The date and time of any previous warning or violation given pursuant to this chapter;
 - 5. The date payment is due; and
 - 6. The right to request an administrative hearing to challenge the imposition of a civil penalty, and the time for requesting that hearing.

9.20.090 Reserved.

9.20.100 Hearings on the imposition of civil penalty — Appeals.

- A. Appointment of an Administrative Hearing Officer. The City Council hereby appoints the Municipal Court Administrative Hearing Officer to act as the Administrative Hearing Officer (“Hearing Officer”).
- B. When the City of El Paso Police Department issues a written Notice of Violation pursuant to this chapter, said Notice shall include the information required by 9.20.080 under this chapter. The notice will be sent to the person by personal delivery or United States Postal Service mail. The notice will be directed to the most current

business address or other mailing address on file with the El Paso County Central Appraisal District or City of El Paso records for the person responsible for the gathering.

- C. The written Notice of Violation will include a notice provision informing the person responsible for the gathering of his right to appeal the Notice of Violation by submitting a written notice requesting an administrative hearing before the Administrative Hearing Officer. The applicant, referred to as the appellant for purposes of the appeal, will submit the written statement to the Police Chief not later than the 20th city business day after the date of the written Notice of Violation. The appellant's written statement requesting the appeal shall clearly state why the appellant contends that there is not a valid basis for the issuance of the Notice of Violation pursuant to this chapter.
- D. If the appellant submits a written statement appealing the Notice of Violation, the Police Chief, or designee(s), will immediately contact the Administrative Hearing Officer in order to schedule a hearing. The notice of the hearing will specify a hearing date, not less than fifteen city business days nor more than thirty city business days after the date the appellant submits the written request for an administrative hearing. The Administrative Hearing Officer will conduct a hearing on the Notice of Violation. The hearing may be continued to a sooner or later date by agreement of the parties, and with the Administrative Hearing Officer's approval, or upon the finding of good cause by the Administrative Hearing Officer for the granting of an earlier or later hearing date.
- E. At the hearing, the appellant will have the opportunity to present all of the appellant's arguments and to be represented by counsel at appellant's expense, present evidence and witnesses on his behalf, and cross-examine any of the El Paso Police Department's witnesses. The Police Chief, or designee, who may also be represented by counsel, bears the burden of proving the grounds for the Notice of Violation by a preponderance of the evidence. The hearing will take no longer than one business day, unless extended by agreement of the parties or at the request of either party, and with approval of the hearing officer, to meet the requirements of due process and the proper administration of justice.
- F. The Administrative Hearing Officer will issue a written decision, including findings of fact and conclusions of law, to the respondent within five city business days from the completion of the hearing. The Administrative Hearing Officer's decision is final.
- G. If the decision is to uphold the Notice of Violation, the decision will become effective on the fourteenth calendar day after it is rendered. If the Administrative Hearing Officer's decision finds that no grounds exist for the Notice of Violation, the Administrative Hearing Officer will, contemporaneously with the issuance of the decision, order the Police Chief to immediately withdraw the Notice of Violation and notify the appellant in writing by mail of such action.
- H. If the decision results in the withdrawal of a Notice of Violation, the withdrawal shall be effective only as to that specific violation, and any other violations of this chapter shall remain intact.

- I. If the hearing officer's final decision upholds the Notice of Violation, the appellant must pay the applicable civil penalty within 30 days of the decision.

9.20.110 Billing and civil penalty — Enforcement

- A. The amount of civil penalty that remains pending may be the subject of a civil action brought by the City of El Paso for recovery of such penalty.
- B. The person who commits the violation must remit payment of the civil penalties to the City within forty-five (45) days of the notice thereof. The payment of any such penalty shall be stayed upon a timely request for an administrative hearing made pursuant to this chapter.
- C. City Council shall have the authority to file any action or proceeding to recover such civil penalty, and take any other actions at law which he may deem necessary to recover same.

SECTION 2. This ordinance shall be effective within 180 days after approval by City Council.

SECTION 3. Except as expressly amended herein, Title 9 (Health and Safety) of the El Paso City Code will remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 20 ____.

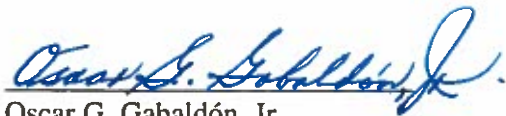
CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

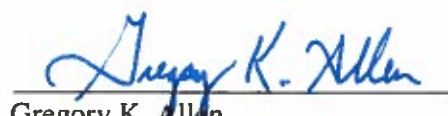
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Oscar G. Gabaldón, Jr.
Assistant City Attorney

APPROVED AS TO CONTENT:



Gregory K. Allen
Chief of Police



Social Host Ordinance

September 20, 2016

City Council Strategic Goal

Goal 2 : Set the Standard for a Safe and Secure City



Council Direction

April 19, 2016- City Council Directive:

“....DIRECT the City Attorney’s Office to research and implement a civil social host ordinance to protect the public health and safety and reduce underage drinking.”



Approach

- **Research of other cities' ordinances**
- **Consultation with Shift +Alcohol Prevention Initiative Project Manager, Dr. Holly Mata**



Ordinance Summary

- Purpose to protect public health, safety and general welfare
- Provides for a civil penalty
- Complementary to current state statutes



Ordinance Summary, continued

- Prohibits gatherings involving underage drinking
- Creates violation for a person to
 - facilitate, or
 - be present with knowledge of underage drinking occurring, or
 - allow underage drinking, or
 - have paid for the rental of premises upon which underage drinking is occurring



Exception / Affirmative Defense

- Exception as allowed by laws of the State of Texas
- Affirmative Defense if gathering is result of criminal trespass
- Not applicable to activities protected by First or Fourth Amendments



Violation Penalties

- Civil Penalty:
 - ✓ \$250 for first violation
 - ✓ \$500 for second violation
 - ✓ \$1,000 for third or subsequent violation / no time limit

- If violator is a juvenile, then both juvenile and parent(s)/guardian(s) are subject to issuance of violation notice
 - ✓ If parent/guardian is not present on a first violation or if a person does not reside at the location of occurrence, a written warning may be issued



Administrative

- Enforcement: by peace officers of the City
- Hearings: by Municipal Court Administrative Hearing Officer
- Hearings: mirror process set forth in other City Code chapters
- Billing: Civil action may be brought by City for unpaid penalties and City Council has authority to take action to recover penalties



Effective Date

- Ordinance is effective 180 days after approval by City Council
- Allows time for dissemination of public information



Questions



Social Host Ordinance

October 18, 2016

City Council Strategic Goal

Goal 2 : Set the Standard for a Safe and Secure City

"Delivering Outstanding Services"



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