

ORDINANCE NO. 832-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA AMENDING CHAPTER 28, WITHIN TITLE FIVE OF THE PACIFICA MUNICIPAL CODE, RELATING TO UNRULY GATHERINGS AND SOCIAL HOST LIABILITY TO ADD MARIJUANA AND CONTROLLED SUBSTANCES

Section 1. The City Council finds as follows:

WHEREAS, the City of Pacifica, pursuant to the police powers delegated to it by Article 11 of the California Constitution, has the authority to enact laws, which promote the public health, safety and general welfare of its residents; and

WHEREAS, the City has a legitimate interest in protecting the health, safety and well-being of its citizens, including those persons under 21 years of age; and

WHEREAS, the City recognizes that the occurrence of loud or unruly parties on private property where alcohol, alcoholic beverages, marijuana and/or controlled substances are served to, or consumed by, underage persons is harmful to the underage persons themselves, is a threat to the general public health, safety, quiet enjoyment of residential property and constitutes a public nuisance; and

WHEREAS, the City has experienced social gatherings, where minors are present and alcohol, marijuana and/or controlled substances are illegally consumed by, served to or in possession of minors; and

WHEREAS, with the passage of the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA) in November, 2016 and SB 94 in June, 2017, recreational marijuana has become legal to adults 21 years and older, and as a result has become more accessible to minors; and

WHEREAS, recent trends amongst minors indicate that minors are engaging in social gatherings wherein all of the invitees bring prescription medication of family members or friends to share with other invitees at the gathering; and

WHEREAS, the City desires to amend its Unruly Gatherings and Social Host Liability Ordinance to prohibit the illegal consumption of controlled substances and/or marijuana by minors as well as the illegal serving of controlled substances and/or marijuana to minors.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFICA DOES ORDAIN AS FOLLOWS:

Section 2. Chapter 28, Amendment.
Chapter 28, "Loud or Unruly Gatherings and Social Host Liability," within Title 5 "Public, Welfare, Morals and Conduct" shall be amended to read as follows, with additions denoted by underlined text and deletions denoted by:

“Chapter 28, Loud or Unruly Gatherings and Social Host Liability”

5-28.01. - Short title.

This ordinance shall be known as the "Social Host Liability Ordinance".

5-28.02. - Purposes.

The purposes of this chapter are:

- (a) To protect the public health, safety and general welfare; and
- (b) To promote the reduction of unlawful consumption of alcohol, controlled substances and/or marijuana by imposing penalties upon persons responsible for loud or unruly gatherings where alcohol, controlled substances and/or marijuana is unlawfully consumed by, served to or in the possession of underage persons; and
- (c) To facilitate the enforcement of laws prohibiting the unlawful consumption or service of alcohol, controlled substances and/or marijuana to underage persons; and
- (d) To offset the municipal costs associated with providing fire, police, and other emergency services to loud or unruly gatherings, by imposing a civil fee upon social hosts and/or land owners who knowingly allow such loud or unruly gatherings to occur on their premises, at their residences, or at rented facilities where alcoholic beverages, controlled substances and /or marijuana are unlawfully served to, consumed by, or in the possession of underage persons.

Section 5-28.03. - Definitions.

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

"Alcohol" shall mean ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, and from whatever source or by whatever process produced.

"Alcoholic beverage" shall include alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, wine or beer, and which contains one-half of one (½%) percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.

“Controlled substance” shall mean a drug, substance, or immediate precursor which is listed in California Health and Safety Code sections 11054, 11055, 11056, 11057, and 11058, as those sections may be amended. For purposes of this Chapter, “controlled substance” does not include any drug or substance that has been lawfully prescribed or recommended by a licensed medical practitioner and is served to, consumed by, or in the possession of a minor pursuant to that prescription.

"Emergency service providers" shall mean and include, but shall not be limited to, Police Department, Fire Department, ambulance service, and other public safety providers.

"Gathering" shall mean any party, event, or other meeting where a group of two (2) or more persons have assembled or are assembling at private property or on rented public property for a social occasion or social activity.

"Hearing Officer" shall mean a private entity, organization, association, or person, or public official, or duly constituted reviewing authority or commission that the City Manager designates or appoints to consider all timely requests for an administrative hearing ("appeal") of a Statement of Response Costs.

"Juvenile" shall mean any person under the age of eighteen (18) years.

"Loud or unruly gathering" shall mean a gathering at private property or rented public property upon which loud or unruly conduct occurs. Such loud or unruly conduct constitutes a public nuisance and includes, but is not limited to:

- (1) Excessive noise (as prohibited by Section 5-10 of the Pacifica Municipal Code or by any other duly enacted statute, law, rule, regulation, or condition of a permit);
- (2) Excessive traffic that is significantly in excess of the normal amount of pedestrian and vehicular traffic for the zoning district at that time of the day;
- (3) Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;
- (4) Public drunkenness or unlawful public consumption of alcohol, alcoholic beverage, or marijuana;
- (5) Unlawful Possession or consumption of any alcohol, alcoholic beverage, marijuana and/or controlled substance by any underage person;
- (6) Unlawful service of any alcohol, alcoholic beverage, marijuana and/or controlled substance to any underage person;
- (7) Assaults, batteries, fights, domestic violence or other disturbances of the peace;
- (8) Vandalism;
- (9) Litter; or
- (10) Any other conduct that constitutes a public nuisance, a threat to the public health, safety, quiet enjoyment of residential property, or the general welfare.

“Marijuana” or “cannabis” shall have the same meaning set forth in California Health and Safety Code section 11018 and Business and Professions Code section 26001(f), as those sections may be amended, and shall include cannabis products as that term is defined in California Health and Safety Code section 11018.1, as that section may be amended. For purposes of this Chapter, “marijuana” or “cannabis” does not include any medicinal cannabis lawfully served to, consumed by, or in the possession of a qualified patient or primary caregiver, as those terms are defined by Health and Safety Code section 11362.7, in conformance with Health and Safety Code section 11362.77, as those sections may be amended.

"Minor" shall mean any person less than twenty-one (21) years of age.

“Practitioner” shall have the same meaning as California Health and Safety Code section 11026, as may be amended.

"Private property" shall mean any real property, place, or premises (including, but not limited to, residential, commercial, or industrial), 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, including, but not limited to, a home, yard, garage, apartment, condominium, hotel or motel room, or other dwelling unit, or a warehouse, hall, or meeting room.

"Response costs" shall mean all costs incurred by emergency service providers and/or the City as a result of a response to a loud or unruly gathering. Such costs shall include, but shall not be limited to, the following:

- (1) Salaries of the police officers and/or fire department personnel, at the salary then in effect for each classification of each individual officer, for a one-hour period of time or the actual amount of time spent responding to or remaining at the property where the disturbance was created, beginning when one or more police officer or fire department personnel leaves a location to go to the scene of the event and ending when all responding personnel are available for other duties, or, if their shifts are ended, when they are finished with those duties related to the event which they are required to complete before going off duty, whichever is greater. Such actual costs shall include wages and fringe benefits for the responding personnel and the sergeant or other superior directing them, including overtime if applicable;
- (2) Vehicle and equipment usage at such rates as established by resolution of the City Council;
- (3) Replacement cost of any material expended, including, but not limited to, the cost of recording medium if audio or video recording equipment is used;
- (4) The cost of any medical treatment to any emergency service providers; and
- (5) The cost of repairing any damaged City equipment or property.

"Responsible person" shall mean any person or persons with a right of possession in the real property on which a loud or unruly gathering is conducted, including, but not limited to:

- (1) An owner of the private property where the loud or unruly gathering is conducted;
- (2) Any person who rents, leases, or otherwise has control of the private property or rented public property where the loud or unruly gathering is conducted; or
- (3) Any person who organizes, supervises, officiates, conducts, or controls the gathering or any other person(s) accepting responsibility for such a gathering. If said person is a juvenile, then the juvenile's parents or guardians shall be jointly and severally liable.

"Second response costs" shall mean any response costs incurred as a result of a second response by emergency service providers to a loud or unruly gathering within twenty-four (24) hours of a prior response.

"Social host" shall mean any responsible person of a gathering who knew or should have known that a minor is in possession of, or consuming any alcohol, alcoholic beverage, marijuana and/or a controlled substance or has possessed or consumed any alcohol, alcoholic beverage, marijuana and/or a controlled substance at the gathering.

"Underage person" shall mean any person less than twenty-one (21) years of age and shall have the same meaning as "minor," defined above.

Section 5-28.04. - Obligations of social host.

(a) It is the duty of any responsible person who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the possession and/or consumption of any alcohol, alcoholic beverage, marijuana and/or controlled substance by any minor, as well as the service of any alcohol, ~~or~~ alcoholic beverage, marijuana and/or controlled substance at the gathering.

(b) It shall be unlawful for any responsible person to fail to take reasonable steps to prevent the possession and/or consumption of any alcohol, alcoholic beverage, marijuana and/or a controlled substance by any minor, as well as the service of any alcohol, alcoholic beverage, marijuana and/or a controlled substance at the gathering.

(c) As used in this section, reasonable steps shall mean and include, but shall not be limited to:

- (1) Controlling access to alcohol, alcoholic beverages, marijuana and/or controlled substances;
- (2) Controlling the quantity of alcohol or alcoholic beverages at the gathering;

(3) Verifying the age of persons at the gathering by inspecting government-issued driver's license or identification card to ensure that minors do not consume alcohol, alcoholic beverages, marijuana and/or a controlled substance while at the gathering; and

(4) Supervising the activities of minors at the gathering.

(d) Whenever a responsible person or social host is present during a gathering when a minor has possessed, consumed, or has been served any alcohol, ~~or~~ alcoholic beverage, marijuana and/or a controlled substance it shall be prima facie evidence that the person knew or should have known that the minor was in possession of, consumed, or was served alcohol, alcoholic beverages, marijuana and/or a controlled substance if the responsible person or social host failed to take all reasonable steps to prevent the possession, consumption, and/or service of alcohol, alcoholic beverages, marijuana and/or a controlled substance to the minor.

Section 5-28.05. - Loud or unruly gatherings unlawful.

Except as permitted by the First or Fourteenth Amendments to the United States Constitution, or by Calif. Const. art. 1, § 4, no person shall cause, allow, permit, suffer, or host any loud or unruly gathering at any private property or rented public property.

Section 5-28.06. - Violations.

(a) A violation of any provision of this chapter shall constitute a misdemeanor offense punishable in accordance with the provisions of Chapter 1-2 ("Penalty Provisions") of the Pacifica Municipal Code.

(b) In the alternative, any violation of this chapter shall be punishable by a civil fine in accordance with Chapter 1-6 ("Administrative Citations") of the Pacifica Municipal Code.

(c) In addition to any civil or criminal fine resulting from a violation of this chapter, all responsible person and/or social hosts (or if such person is a juvenile, the parents or guardians of that juvenile) shall be jointly and severally liable for the response costs and/or second response costs for emergency service providers as provided in this chapter.

(d) In addition to the penalties provided by this chapter, any violation of this chapter shall be deemed a public nuisance, as an immediate threat to the public health and safety, and may be summarily abated by the City by any and all means (civil, administrative, and/or equitable) as provided by law or in equity. All remedies provided herein shall be cumulative and not exclusive. Summary abatement actions include, but are not limited to, the authorization for emergency service providers:

(1) To order the responsible person(s) and/or social host(s) to immediately disperse the gathering; or

(2) To order all persons attending the gathering to disperse immediately, if the emergency service provider is unable to identify immediately the responsible person(s) or social host(s).

(e) Each violation of any provision, restriction, or requirement of this chapter shall constitute a new and separate offense, punishable as such.

Section 5-28.07. - Response costs.

(a) All responsible persons and/or social hosts shall be jointly and severally liable for response costs incurred when emergency service providers respond to a loud or unruly gathering at private property or rented public property where at least one minor is possessing, consuming, or being served, or where at least one minor has possessed, consumed, or been served any alcohol, alcoholic beverages, marijuana, and/or a controlled substance. No prior warning or notification shall be required before the assessment of response costs if response costs are being imposed pursuant to this section.

(b) Emergency service providers utilized to respond to a loud or unruly gathering at private property or rented public property where at least one minor is possessing, consuming, or being served, or where at least one minor has possessed, consumed, or been served any alcohol, alcoholic beverages, marijuana and/or a controlled substance shall be deemed to be on special security assignment, and the costs thereof are declared to be beyond the normal services provided by the City or other emergency service providers.

(c) Collection of response costs shall be made in accordance with the provisions of Section 5-28.09 of this chapter.

Section 5-28.08. - Second response costs.

(a) All responsible persons and/or social hosts shall be liable for any response by emergency service providers that make a second response to a loud or unruly gathering within twenty-four (24) hours after a warning has been issued, as provided in this section.

(b) Except as provided in Section 5-28.07, when an emergency service provider determines that a loud or unruly gathering is occurring at private property or rented real property, the emergency service provider shall notify the responsible person(s) that the party constitutes a public nuisance and that such persons(s) (or, if that person is a juvenile, the parents or guardians of that juvenile) shall be held jointly and severally liable for the costs of providing emergency service providers for a second or subsequent response to the same premises as a result of a loud or unruly gathering within twenty-four (24) hours.

(c) Except as provided in Section 5-28.07, the first response and warning pursuant to this section shall be deemed to be a normal police/emergency service. Emergency service providers utilized on a second or subsequent response shall be deemed to be on special security assignment, and the costs thereof are declared to be beyond the normal services provided by the City or other emergency service personnel.

(d) Collection of second response costs shall be made in accordance with the provisions of Section 5-28.09 of this chapter.

Section 5-28.09. - Collection of response costs.

(a) Within forty-five (45) calendar days of a loud or unruly gathering for which an emergency service provider has responded, the City shall issue a Statement of Response Costs ("bill") to the responsible person(s) and/or social host regarding the response costs or second response costs by first-class mail. The notice shall contain the following information:

- (1) The name of the person(s) being held responsible and/or liable for the payment of the response costs or second response costs;
- (2) The address of the private property or rented public property where the loud or unruly gathering occurred;
- (3) The date and time of the response, and, if applicable of the second response;
- (4) The emergency service provider (e.g., Police Department, Fire Department, ambulance, etc.) that responded to the loud or unruly gathering;
- (5) An itemized list of the response costs or second response costs for which the person(s) is being held liable;
- (6) The method and/or manner for payment of the response costs, and that interest at a rate of ten (10%) percent per annum shall be incurred for any response costs not timely tendered;
- (7) The time limit and manner in which a responsible person(s) and/or social host may contest the Statement of Response Costs as set forth in Section 5-28.10;
- (8) A statement that if a timely request for an administrative hearing to contest the Statement of Response Costs is not made, the response costs shall be paid within thirty (30) calendar days of the Statement of Response Costs;
- (9) A statement that if, after an administrative hearing, appeal, or other final determination, the owner of the property where the loud or unruly gathering occurred is deemed responsible for any response costs pursuant to this chapter, such costs, if unpaid within thirty (30) calendar days of the final determination, shall become a lien against the property as is authorized by California Government Code § 38773.1; and
- (10) A statement that if the response costs or second response costs are not timely paid, the City shall record a lien against the private property where the loud or unruly gathering occurred as is authorized by California Government Code § 38773.1.

(b) Statements of Response Costs shall be served to the responsible person(s) and/or social hosts either personally or via first-class mail at his/her/their last known address as demonstrated by any of the following:

- (1) Any address provided to any emergency service provider;
- (2) Any address listed on any records of the City (including licenses, permits, or other entitlements issued by the City), County of San Mateo, or utility company;
- (3) The mailing address on the last equalized assessment roll or supplemental roll; and
- (4) Any other public record or document upon which reasonable persons are accustomed to rely for such information.

(c) The failure of any responsible person(s) and/or social host to receive a properly addressed Statement of Response Costs shall not invalidate any action or proceeding pursuant to this chapter, nor shall it negate the responsible person(s) and/or social host(s) responsibility and obligation to tender the response costs.

(d) Payment of response costs and/or second response costs shall be tendered to the City of Pacifica as indicated on the Statement of Response Costs within thirty (30) calendar days of the Statement of Response Costs. Payment of the response costs or second response costs shall be stayed pending any timely administrative appeal commenced pursuant to Section 5-28.10 of this chapter.

(e) Response costs or second response costs that are not timely tendered to the City as required by the provisions of this chapter shall accrue interest at the rate of ten (10%) percent per annum from the date of delinquency, and responsible persons shall be liable for said interest.

(f) If a timely request for an administrative appeal pursuant to Section 5-28.10 of this chapter is not made, such costs, if unpaid within thirty (30) calendar days of the Statement of Response Costs issued to the owner of the private property on which the loud or unruly gathering occurred, shall become a nuisance abatement lien or special assessment against the property as is authorized by California Government Code §§ 38773.1 and 38773.5, respectively.

(g) If, following an administrative hearing, appeal, or other final determination, the owner of the private property upon which the loud or unruly gathering occurred is determined to be responsible for any response costs or second response costs, such costs, if unpaid within thirty (30) calendar days of notice of the final determination, shall become a nuisance abatement lien or special assessment against the property as is authorized by California Government Code §§ 38773.1 and 38773.5, respectively.

(h) Response costs shall also be deemed personal obligations of any responsible party assessed response costs pursuant to the provisions of this chapter, and, notwithstanding any other provision of this chapter, the City is entitled to recover any delinquent response costs by use of any and all available legal means.

(i) In any action in which the City is required to initiate legal or other proceedings to recover any delinquent response costs, the responsible person(s) shall also be liable for any costs of suit and costs of recovery. Said recovery costs may include reasonable attorney's fees incurred in the action if the City elects in writing to recover its attorney's fees pursuant to California Government Code § 25845(c) and if the City prevails. In any action in which the City has elected to seek the recovery of its attorney's fees, the other party may likewise do so, provided that the other party prevails in the action and any award for such attorney's fees shall not exceed the amount of reasonable attorney's fees incurred in that action or proceeding.

Section 5-28.10. - Administrative appeal of statement of response costs.

(a) Any responsible person and/or social host issued a Statement of Response Costs may contest the imposition of the response costs, or that he or she is a responsible person and/or social host, by filing a request for an administrative hearing ("appeal") on a City-approved form with the office of the City Clerk within ten (10) calendar days from the date of the Statement of Response Costs. A written request for an appeal shall contain the following information:

- (1) Name, address, and telephone number of each responsible party who is appealing the Statement of Response Costs;
- (2) Address and description of the private property or rented real property upon which the loud or unruly gathering is alleged to have occurred;
- (3) Date of the Statement of Response Costs;
- (4) Grounds for appeal in sufficient detail to enable the Hearing Officer to understand the nature of the controversy; and,
- (5) The signature of each appellant under penalty of perjury.

(b) The failure of the City Clerk to receive a timely request for an appeal constitutes a waiver of the right to contest a Statement of Response Costs. In this event, the Statement of Response Costs shall be final and binding.

(c) Any person filing a request for an administrative appeal shall be notified in writing by first-class mail of the date, time, and place set for the appeal hearing, which shall be conducted within sixty (60) days of the date a timely and complete request is received by the City Clerk. Such notice shall be given at least ten (10) calendar days prior to the date of the hearing. Service of this notice is deemed complete at the time of mailing. The failure of an appellant to receive a properly addressed notice shall not invalidate the Statement of Response Costs or any appeal hearing, City action, or proceeding conducted pursuant to this chapter.

(d) The appeal hearing contesting a Statement of Response Costs shall be conducted in accordance with the provisions of Section 1-6.08 of this Code (establishing procedures for appeals of administrative citations).

(e) The City Clerk shall cause a Confirmed Statement of Response Costs (as confirmed, modified, revised, or corrected by the Hearing Officer) to be served upon all responsible persons by first-class mail. The decision of the Hearing Officer is final and conclusive. The Confirmed Statement of Response Costs shall also contain the following statement: "Judicial review of the Hearing Officer's decision is subject to the provisions and time limits set forth in California Code of Civil Procedure §§ 1094.5 et seq."

(f) Failure of any responsible person to receive a Confirmed Statement of Response Costs shall not invalidate the Confirmed Statement of Response Costs or any City hearing, action, or proceeding conducted pursuant to this chapter.

Section 5-28.11. - Applicability of other laws.

(a) This chapter does not exclusively regulate loud or unruly gatherings and/or disturbances of the peace within the City, and the remedies and penalties provided in this chapter are in addition to other remedies and penalties authorized by this Code, or by the laws of the State of California or of the United States.

(b) Nothing in the adoption or administration of this chapter shall be construed as affecting the ability to initiate or continue the concurrent or subsequent criminal prosecution for any violation of the provisions of the Pacifica Municipal Code or any state law (including, but not limited to, Penal Code § 272 and Business and Professions Code §§ 25658, 25658.2, and 25662) arising out of the same circumstances necessitating the application of this chapter.

Section 5-28.12 - Severability.

If any section, subsection, subdivision, paragraph, sentence clause, or phrase of this chapter or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, invalid or unenforceable.”

Section 3. California Environmental Quality Act (CEQA) Determination

Adoption of this Ordinance is exempt from environmental review as the adoption of this Ordinance does not qualify as a “project” pursuant to Public Resource Code section 21065, since it can be seen with certainty that there is no possibility that adoption of the Ordinance would cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Section 4. Effective Date

This Ordinance shall take effect thirty (30) days after adoption as provided by Government Code section 36937.

Section 5. Publication; Certification

The City Clerk shall attest to the adoption of this Ordinance and cause the same to be published in accordance with State law.

PASSED AND ADOPTED this 9th day of April, 2018, by the following vote:

AYES: Martin, O'Neill, Digre, Vaterlaus, Keener
NOES: None
ABSTAIN: None
ABSENT None



John Keener, Mayor

ATTEST:



Kathy O'Connell, City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney