



CITY OF CARSON

Legislation Text

File #: 2019-263, Version: 1

Report to Mayor and City Council

Tuesday, August 20, 2019

Discussion

SUBJECT:

CONSIDERATION OF INTRODUCTION OF ORDINANCE NO. 19-1936, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTIONS 4211 THROUGH 4211.9 OF CHAPTER 2 (ALCOHOLIC BEVERAGES) OF ARTICLE IV (PUBLIC PEACE) OF THE CARSON MUNICIPAL CODE TO INCLUDE THE USE OR CONSUMPTION OF CANNABIS, CONTROLLED SUBSTANCES, AND TOBACCO PRODUCTS BY MINORS WITHIN THE PROHIBITIONS OF THE CITY'S SOCIAL HOST ORDINANCE, AND RENAMING SAID CHAPTER ACCORDINGLY (CITY COUNCIL)

I. SUMMARY

The proposed ordinance would amend the City's Social Host Ordinance (Municipal Code Sections 4211 *et seq.*) to include the use or consumption of cannabis, controlled substances, and tobacco products by minors within the scope of its prohibitions.

Following the legalization of adult-use cannabis, and the subsequent reduction in the cannabis black market, one of the ways for minors to obtain cannabis is through parties or other events hosted by people over the age of 21. The City originally adopted the Social Host Ordinance in order to combat this form of minor access with regard to alcohol, by holding the adult (21+) hosts of parties or social events responsible for abetting or tolerating minors' consumption of alcohol at their events. Studies have shown that ordinances such as the Social Host Ordinance, which have been adopted by many cities statewide, have been effective at reducing minors' access to and consumption of alcohol. As cannabis has begun to follow the same trends as alcohol, the City Council may now deem it warranted for the protection of public health and safety to include cannabis in the Social Host Ordinance to deter adult hosts from allowing minors to access cannabis at parties or social events they host.

The City Council may also find it warranted to include the use or consumption of tobacco products and controlled substances in the scope of the ordinance, given the dangers associated with such activities, the rise and proliferation of such activities among minors, and that a primary means of minors gaining access to tobacco products (which are illegal for minors in California) and controlled substances (which are illegal for all persons without

a valid medical prescription) is through parties or other events hosted by adults.

The proposed ordinance would also add certain exemptions from its applicability to account for its expanded scope and would clarify the duties and obligations of adult hosts under the ordinance.

The ordinance would also rename Chapter 2 of Article IV of the Municipal Code from “Alcoholic Beverages” to “Alcoholic Beverages; Social Host Regulations” to reflect its inclusion of the social host ordinance, which would no longer exclusively constitute a regulation of alcohol.

II. RECOMMENDATION

INTRODUCE for first reading, by title only and with further reading waived, Ordinance No. 19-1936, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTIONS 4211 THROUGH 4211.9 OF CHAPTER 2 (ALCOHOLIC BEVERAGES) OF ARTICLE IV (PUBLIC PEACE) OF THE CARSON MUNICIPAL CODE TO INCLUDE THE USE OR CONSUMPTION OF CANNABIS, CONTROLLED SUBSTANCES, AND TOBACCO PRODUCTS BY MINORS WITHIN THE PROHIBITIONS OF THE CITY’S SOCIAL HOST ORDINANCE, AND RENAMING SAID CHAPTER ACCORDINGLY

III. ALTERNATIVES

1. DO NOT INTRODUCE Ordinance No. 19-1936.
2. TAKE another action the City Council deems appropriate.

IV. BACKGROUND

In 2013, the City Council adopted Ordinance No. 13-1522, known commonly as the Social Host Ordinance. This ordinance was passed in response to: (1) studies which showed that minors were most likely to obtain and consume alcohol at a party or other event hosted by persons over the age of 21; and (2) the effectiveness of similar ordinances in other cities in combating this trend. By establishing liability for the adult who provides the alcohol, the Social Host Ordinance shifts enforcement to those enabling the consumption of alcohol.

Changed Circumstances - Cannabis

On November 8, 2016, the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”) was approved by California voters as Proposition 64, legalizing limited non-medicinal adult (i.e., 21+ years of age) use and possession of cannabis. The passage of AUMA and the creation of the legal cannabis market has led to a gradual reduction of the cannabis black market, which reduction remains ongoing as implementation of AUMA progresses. As such, cannabis consumption by minors is now following the same trend as seen with alcohol, in that minors are unable to purchase cannabis on the legal market and now may seek to obtain and consume cannabis at parties or other social events held or hosted by

adults.

Further, cannabis can have many of the same dangerous and destructive qualities when consumed by minors as alcohol consumption by minors. As such, minors' consumption of cannabis reasonably warrants the same treatment as underage alcohol consumption.

Controlled Substances

Controlled substances comprise all of the dangerous and addictive drugs that are illegal under federal law, the Controlled Substances Act, without a valid medical prescription. Controlled substances are grouped into five "schedules," based on whether they have a currently accepted medical use in treatment in the United States, their relative abuse potential, and likelihood of causing dependence when abused. The dangers and addictive qualities of controlled substances are well-documented, and are the reason for their designation as controlled substances under federal law.

Recently, California has experienced a proliferation of illegal use of controlled substances among minors, as evidenced by a rise in the number of overdose deaths involving opioids such as heroin and fentanyl in recent years. Given this proliferation, the dangers of using controlled substances, and the possibility of minors gaining access to controlled substances at parties or gatherings hosted by adults, minors' use or consumption of controlled substances also reasonably warrants inclusion in the social host ordinance, provided that an exception is made for controlled substances taken pursuant to a valid medical prescription.

Tobacco Products

The dangers of tobacco products such as cigarettes are well-documented. Smoking has devastating health effects, as evidenced by facts and statistics made available by authorities such as the CDC, Surgeon General and World Health Organization. Many lifelong smokers become addicted between the ages of 18 to 21, which is a critical period when many smokers move from experimental smoking to regular, daily use.

Recently, a new form of tobacco product has emerged that poses a particular risk for minors: electronic cigarettes. Electronic cigarettes, also known as vapes, vape pens, or electronic hookahs, contain nicotine, which is highly addictive, and other chemicals found in regular cigarettes, such as formaldehyde and lead, which are harmful and can cause cancer, birth defects, and other health problems. With the multitude of flavors, colorful packaging, tech appeal, and advertising, electronic cigarettes can be very appealing to kids and teens, and have become a primary new method for tobacco companies to addict minors.

Tobacco products cannot legally be bought by or sold to persons under the age of 21 (minors) in California. Accordingly, one of the primary means for minors to obtain or use tobacco products is at parties and social gatherings hosted by persons over the age of 21. This fact, along with the risks posed to minors by tobacco products, reasonably warrants their inclusion in the social host ordinance.

Proposed Ordinance

The proposed ordinance would amend the Social Host Ordinance, which is codified at Carson Municipal Code Sections 4211 through 4211.9, to expand the scope of its existing prohibitions to include consumption or use of cannabis (including cannabis and cannabis products), controlled substances, and tobacco products.

The proposed ordinance would also create three new exemptions from applicability of the Social Host Ordinance to account for its expanded scope. Firstly, under California state law, cannabis can be consumed legally for medicinal purposes by those under the age of 21 when they hold a valid physician's recommendation, so such consumption would be expressly exempted from the Social Host Ordinance. Secondly, the proposed ordinance would expressly exempt hemp-based products such as CBD oils that are not considered "cannabis" within the meaning of applicable federal and state law. Thirdly, the proposed ordinance would exempt controlled substances that are taken pursuant to a valid medical prescription, because such use or consumption is legal and necessary for the health of the person having the prescription.

Although cannabis is a "controlled substance" as defined in federal law, it is defined and treated separately from controlled substances under the proposed ordinance due to state and local laws legalizing cannabis and necessitating different exemptions, as discussed above.

Finally, the proposed ordinance would add an element of knowledge or intent to the Social Host Ordinance and would more clearly delineate the duties that adult hosts must fulfill in order to comply with the ordinance. Specifically, the proposed ordinance would amend the Social Host Ordinance to provide that an adult host must *knowingly* host, permit, or allow a party, gathering or event in order to be subject to the Social Host Ordinance. However, a host would be deemed to "knowingly" do so whenever the host knows that consumption of the prohibited substances by minors is occurring *or reasonably should have known* that such conduct was occurring if the host had taken certain "reasonable steps" to prevent such conduct.

The three "reasonable steps" that a host is responsible to take are: (1) controlling access to alcohol, cannabis and tobacco products at the party; (2) prohibiting controlled substances at the party (except by prescription); and (3) supervising the activities of minors at the party. These enumerated reasonable steps will help adult hosts know what their responsibilities are under the ordinance, and will help establish an appropriate standard of knowledge or intent that must exist to result in a violation of the ordinance.

The proposed ordinance would not alter the penalty or enforcement provisions of the Social Host Ordinance, except as stated above. The proposed ordinance would only amend Sections 4211 through 4211.4, as only amendments to those sections are necessary to accomplish the foregoing purposes. However, all sections of the Social Host Ordinance are recited within the proposed ordinance for the sake of clarity and comprehensiveness.

Fines

A further issue for the City Council to consider is a potential update to the fines that can be levied for violations of the Social Host Ordinance. The proposed ordinance does not currently provide for any amendment to the fine provisions (set forth in CMC Section 4211.5), but the City Council may wish to consider amending such provisions to increase the fine amount. Currently, the fine is \$250 for the first violation, \$500 for the second, and \$1000 for each additional violation within one year of the first violation. Other neighboring cities have more punitive fine structures (for first, second, and then additional violations), as follows:

- Manhattan Beach - \$1000, \$2000, \$5000
- Palos Verdes Estates - \$2500, \$5000, \$7500
- Hermosa Beach - \$2500, \$3500, \$5000
- Rancho Palos Verdes - \$2500, \$5000, \$7500

It should be noted that there are constitutional protections associated with excessive fine amounts, which the City Attorney's office can analyze in detail if the Council is interested in significantly increasing the fines.

V. FISCAL IMPACT

None.

VI. EXHIBITS

A. Ordinance No. 19-1936, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTIONS 4211 THROUGH 4211.9 OF CHAPTER 2 (ALCOHOLIC BEVERAGES) OF ARTICLE IV (PUBLIC PEACE) OF THE CARSON MUNICIPAL CODE TO INCLUDE THE USE OR CONSUMPTION OF CANNABIS, CONTROLLED SUBSTANCES, AND TOBACCO PRODUCTS BY MINORS WITHIN THE PROHIBITIONS OF THE CITY'S SOCIAL HOST ORDINANCE, AND RENAMING SAID CHAPTER ACCORDINGLY. (pp. 6-14)

Prepared by: City Attorney's Office