



STAFF REPORT

DATE: FEBRUARY 7, 2012
 TO: HONORABLE MAYOR AND CITY COUNCIL
 FROM: ROD FOSTER, CITY MANAGER *[Signature]*
 PREPARED BY: STEVE WARD, POLICE CHIEF
 SUBJECT: ORDINANCE ADDING CHAPTER 9.15 TO THE COLTON MUNICIPAL CODE TO PROHIBIT THE HOSTING OF GATHERINGS AT WHICH ALCOHOLIC BEVERAGES AND/OR OTHER HARMFUL SUBSTANCES ARE CONSUMED BY MINORS

RECOMMENDED ACTION

It is recommended that the City Council waive full reading, read by title only and introduce by title only Ordinance No. O-02-12, an ordinance of the City Council of the City of Colton adding Chapter 9.15 to the Colton Municipal Code to prohibit the hosting of gatherings at which alcoholic beverages and/or other harmful substances are consumed by minors.

GOAL STATEMENT

This ordinance supports the Council’s goal to protect the public health, safety and general welfare within the City of Colton. Additionally, the purpose of this ordinance is to protect the public health and safety and general welfare by enhancing the ability of law enforcement to abate parties, gatherings, or events where minors might be consuming alcohol and/or other harmful substances.

BACKGROUND

Since January 1, 2011, the Colton Police Department has responded to over 195 disturbing the peace party calls. Police officers investigating these complaints frequently found minors consuming alcohol, illegal drugs, and other unlawful substances. The consumption of alcohol, illegal drugs, and other unlawful substances by minors often resulted in unruly and/or risky behavior which was dangerous to those participating, and had a detrimental effect on the welfare and overall safety. On almost all occasions where minors were participating in these types of unhealthy and illegal activities, adult supervision was absent or lax. In other cases, adults were found to be encouraging, contributing, condoning, or hosting such events.

Police officers frequently were required to make multiple responses to a location of a party or gathering, causing a drain on resources. Officers had limited authority to abate these events. Adults could rarely be held accountable, as the law generally requires that an officer actually witness an adult furnishing the alcohol. Parents or guardians who merely provided the venue for

the party, gathering, or event then left it to the control of the minor(s) could not be held liable. Adults who hosted parties and failed to exercise proper and reasonable supervision in addition, prevent minors from obtaining or consuming alcohol or other illegal substances could also not be held liable.

ISSUES/ANALYSIS

Social host accountability laws, such as this ordinance, are designed to hold private individuals responsible for any underage drinking and use of illegal and/or harmful substances that takes place at parties or gatherings on property they own, lease or otherwise control.

Research shows that underage drinking is a major threat to the health and safety of youth, not only with drinking and driving, but also with a variety of other negative consequences such as lowered academic performance, sexual assaults, fights and violence resulting in injury. Alcohol is the number one drug of choice for American youth and the leading cause of death among teenagers.

Currently, there is no legal authority for police officers to abate an event solely on the basis of underage drinking or drug use taking place. In addition, there is no specific violation or penalty for hosting an event that may lead to a declaration of an unlawful assembly. Multiple responses to unruly gatherings strains vital police resources. For police officer safety purposes, any party complaint will always require the response of multiple police officers; large events often require the response of every officer on the shift.

In an effort to alleviate the issues presented, staff recommends the approval and addition of Chapter 9.15 to the Colton Municipal Ordinance, to protect the public health, safety and general welfare by prohibiting the hosting of gatherings at which alcoholic beverages and/or other harmful substances are consumed by minors, and allowing the police to abate such gatherings when they take place.

FISCAL IMPACTS

There is no fiscal impact to the current budget, however, a savings in officer time with regards to response to events may be realized, and cost recovery may be generated through the imposition of fines for violations.

ALTERNATIVES

1. Provide alternative direction to staff.

ATTACHMENTS

1. Ordinance No. O-02-12

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ORDINANCE NO. O-02-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COLTON ADDING CHAPTER 9.15 TO THE COLTON MUNICIPAL CODE TO PROHIBIT THE HOSTING OF GATHERINGS AT WHICH ALCOHOLIC BEVERAGES AND/OR OTHER HARMFUL SUBSTANCES ARE CONSUMED BY MINORS

WHEREAS, the City of Colton (“City”), pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, citizens of the City have complained to the Colton Police Department about violent and unruly behavior at residences or other locations that have been the subject of multiple police calls; and

WHEREAS, Chapter 8.12 of the Colton Municipal Code permits recovery of costs associated with the City’s enforcement or abatement nuisances in accordance with state law; and

WHEREAS, the City Council finds that unsupervised parties on private or public property where alcohol is consumed by minors constitute nuisances and are harmful to the minors themselves and to the communities where such parties are held; and

WHEREAS, in addition to alcohol, consumption of other substances that are harmful to minors frequently occur at such parties and gatherings, including marijuana and other controlled substances, inhalants and tobacco products; and

WHEREAS, the Colton Police Department’s ability to abate gatherings where alcohol or other harmful substances are consumed by minors on private and public property will result in a decrease in abuse of alcohol and other harmful substances by minors, as well as decreases in physical altercations and injuries, neighborhood vandalism, and excessive noise disturbance, thereby improving public safety; and

1 As used in this Chapter, the following words and phrases have the meanings set forth in
2 this Section:

3 A. "Alcohol" shall have the same meaning as in California Business and Professions
4 Code section 23003, as it may be amended from time to time, or any successor section.

5 B. "Alcoholic Beverage" shall have the same meaning as in California Business and
6 Professions Code section 23004, as it may be amended from time to time, or any successor
7 section.

8 C. "Controlled Substance" shall mean any controlled substance listed in the
9 California Uniform Controlled Substances Act (California Health and Safety Code section 11000
10 et seq.) or the federal Controlled Substances Act (21 USC 801 et seq.), as they may be amended
11 from time to time.

12 D. "Gathering" means a group of two (2) or more persons who have assembled or are
13 assembling for a social occasion or social activity at a residence or on other public or private
14 property.

15 E. "Guardian" means: (1) a person who, under court order, is the guardian of the
16 person of a Minor; or (2) a public or private agency with whom a Minor has been placed by the
17 court.

18 F. "Harmful Substances" shall include all of the following, as defined in this Chapter:
19 Alcohol, Alcoholic Beverage, Controlled Substance, Inhalant, Marijuana and Tobacco Products.

20 G. "Inhalant" includes but is not limited to any aerosol or aerosol spray, any volatile
21 solvent including but not limited to toluene or any substance or material containing toluene, any
22 gas including but not limited to nitrous oxide or any substance containing nitrous oxide, nitrites
23 (commonly known as "poppers," "snappers," or "whippets"), and any other chemical substance or
24 chemical compound that is inhaled for the purpose of becoming intoxicated.

25 H. "Marijuana" shall have the same meaning as in California Health and Safety Code
26 section 11018 or United States Code, Title 21, section 802, as they may be amended from time to
27 time, or any successor sections.

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I. "Minor" means any person under 21 years of age for purposes of Alcohol, Alcoholic Beverages, Controlled Substances, Inhalants and Marijuana, and under the age of 18 years of age for purposes of Tobacco Products.

J. "Parent" means a person who is a natural parent, adoptive parent, or step-parent of another person.

K. "Premises" means any residence or other private property, individual unit or place, including any commercial or business premises.

L. "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

M. "Tobacco Products" shall have the same meaning as in Chapter 9.22 of this Municipal Code.

9.15.020 Host Obligations

A. Except as permitted by state law, it is unlawful for any person to permit, allow, or host a Gathering at his or her place of residence or other private property, public place, or any other premises under his or her control where any Harmful Substances have been consumed by a Minor, if such person either knows or reasonably should know that a Minor has consumed any Harmful Substances.

B. Any person who permits, allows or hosts a Gathering shall be rebuttably presumed to have actual or constructive knowledge that Minors have consumed Harmful Substances if such person is present at the premises of the Gathering at the time any Minor consumes a Harmful Substance, or if that person has not taken all reasonable steps necessary to prevent the consumption of Harmful Substances by Minors, as set forth in subdivision Section 9.15.020(E) below.

C. This Section shall not apply to Gatherings where religious services and/or activities protected by Article I, Section 4 of the California Constitution are exercised, nor shall

1 the prohibition apply to conduct involving the use of alcoholic beverages exclusively between a
2 Minor and his or her Parent or Guardian.

3 D. This Section shall not apply to any location or place regulated by the California
4 Department of Alcohol and Beverage Control.

5 E. It is the duty of any person who permits, allows or hosts a Gathering at his or her
6 place of residence, other private property, public place, or any other premises under his or her
7 control, where Minors will be present, to take all reasonable steps to prevent the consumption of
8 Harmful Substances by any Minor at the Gathering. Reasonable steps shall include, at a
9 minimum, the following: (1) preventing any access by Minors to any Harmful Substances at the
10 Gathering; (2) controlling access to Alcoholic Beverages and Tobacco Products at the Gathering;
11 (3) controlling the quantity of Alcoholic Beverages and Tobacco Products at the Gathering to an
12 amount which can be monitored and its access controlled effectively; (4) verifying the age of
13 persons who consume Alcoholic Beverages or Tobacco Products at the Gathering by inspecting
14 drivers licenses or other government-issued identification cards; (5) prohibiting the use of
15 Controlled Substances and Marijuana at the Gathering; (6) prohibiting the defined use of
16 Inhalants at the Gathering (e.g. inhaled for the purpose of becoming intoxicated); and (7)
17 monitoring the activities of all persons at the Gathering, including Minors.

18 F. A person who hosts a Gathering shall not be in violation of this Chapter if he or
19 she, before any other person makes a complaint to the Colton Police Department or other law
20 enforcement agency, seeks assistance from the Colton Police Department or other law
21 enforcement agency to either: (1) remove any person who refuses to abide by the host's rules or
22 requirements with respect to his or her performance of the duties imposed by this Chapter; or (2)
23 terminate the Gathering because the host has been unable to prevent Minors from consuming
24 Harmful Substances, despite having taken all reasonable steps to do so.

25 **9.15.030 Violation; Penalty**

26 A. Criminal violations of this Chapter shall be misdemeanors and shall be punishable
27 as set forth in Chapter 8.02 of this Code.

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B. Amounts of fines and/or penalties for violations of this Chapter shall be established by resolution of the City Council.

C. Nothing in this Chapter in any way limits any other remedy that may be available to the City, or any penalty that may be imposed by the City.

9.15.040 Collection of Enforcement Costs

As provided for in Section 8.02.010 of this Code, every violation of this Chapter 9.15 shall be deemed to be a public nuisance and abated by the City. The City may seek reimbursement for actual costs associated with the enforcement of this Chapter pursuant to Chapters 8.02 and 8.12 of the Colton Municipal Code, as well as any other applicable law.”

SECTION 2: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to unconstitutional, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council of the City of Colton 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 section, subsection, subdivision, paragraph, sentence, clause or phrases be declared unconstitutional.

SECTION 3: This Ordinance shall take force and effect thirty (30) days after its adoption.

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SECTION 4: The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City of Colton in accordance with law.

PASSED, APPROVED, AND ADOPTED this 7th day of February, 2011.

SARAH S. ZAMORA, Mayor

ATTEST:

EILEEN C. GOMEZ, CMC
City Clerk

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss.
3 CITY OF COLTON)
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6 I, EILEEN C. GOMEZ, City Clerk of the City of Colton, do hereby certify that
7 foregoing Ordinance No. O-02-12 was duly and regularly adopted by the City Council of the City
8 of Colton at a regular meeting thereof on the 7th day of February, 2012 and that the same was
9 passed and adopted by the following vote, to wit:

10 AYES:

11 NOES:

12 ABSENT:

13 ABSTAIN:
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Eileen C. Gomez, City Clerk
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SUMMARY

On February 7, 2012 the Colton City Council will consider adopting an ordinance adding Chapter 9.15 to the Colton Municipal Code to prohibit the hosting of gatherings at which alcoholic beverages and/or other harmful substances are consumed by minors.

The City Council meets at 6:00 p.m. in the Council Chambers in the Colton City Hall, located at 650 North La Cadena Drive, Colton, CA 92324. The City Clerk's office is located in City Hall near the Council Chambers.