

CITY OF RIVERBANK

ORDINANCE NO. 2019-008

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK,
CALIFORNIA, AMENDING TITLE XIII: LAND USAGE, CHAPTER 134:
PROHIBITION AGAINST UNDERAGE DRINKING AND SOCIAL HOST
LIABILITY BY REPEALING THIS SECTION IN ITS ENTIRETY AND
SUBSTITUTING IT WITH NEW CHAPTER 134: PROHIBITION AGAINST
UNDERAGE DRINKING AND CANNABIS USE AND SOCIAL HOST LIABILITY,
TO THE RIVERBANK MUNICIPAL CODE OF ORDINANCES**

WHEREAS, Minors often obtain, possess, and consume alcoholic beverages and/or cannabis at gatherings held on private property while the persons responsible for the occurrence of such gatherings often fail to take reasonable steps to prevent this consumption; and

WHEREAS, Riverbank has an existing Social Host Ordinance for alcohol consumption by minors which holds the host responsible for the underage drinking and the City desires to add adult use (recreational) cannabis consumption by minors to the ordinance as another tool for law enforcement; and

WHEREAS, the proposed ordinance amendment complies with the General Plan in that one of the City's Guiding Principles in the General Plan is "Our City should be safe and healthy for all our residents"; and

WHEREAS, the amendment to the City of Riverbank Municipal Code is exempt from environmental review because it is not a project within the meaning of Section 15378 of the State CEQA Guidelines.

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

SECTION 1: Title XIII: Land Usage, Chapter 134: Prohibition Against Underage Drinking And Social Host Liability by Repealing this Chapter in its Entirety and Substituting it with a new Chapter 134: Prohibition Against Underage Drinking And Cannabis Use And Social Host Liability, which shall read as follows:

TITLE XIII: GENERAL OFFENSES

**CHAPTER 134: PROHIBITION AGAINST UNDERAGE DRINKING AND
CANNABIS USE AND SOCIAL HOST LIABILITY**

Section

- 134.01 Legislative findings
- 134.02 Intent and purpose
- 134.03 Definitions
- 134.04 Consumption of alcohol and cannabis by minor prohibited in public place, place open to public, or place not open to public
- 134.05 Hosting, permitting, allowing a party, gathering, or event where minors consume alcoholic beverages and cannabis prohibited
- 134.06 Prima facie evidence
- 134.07 Enforcement authority
- 134.08 Public nuisance and recovery of response costs
- 134.09 Billing and collection
- 134.10 Special fund
- 134.11 Appeals

- 134.20 Penalty

- 134.30 Severability

§ 134.01 LEGISLATIVE FINDINGS.

(A) Minors often obtain, possess, or consume alcoholic beverages and/or cannabis at gatherings held at private residences or other private property, places or premises, including rented commercial premises which are under the control of a person who knows or should know of the consumption of alcoholic beverages and/or cannabis by minors, yet persons responsible for the occurrence of such gatherings often fail to take reasonable steps to prevent the consumption of alcoholic beverages and/or cannabis by minors at these gatherings.

(B) Consumption of Alcoholic Beverages by Minors who are under the legal age to consume Alcohol in the state is harmful to the Minors themselves and poses an immediate threat to the public health, safety, and welfare in that it increases Alcohol abuse by Minors, physical altercations, violent crimes including rape and other sexual offenses, accidental injury, neighborhood vandalism, and excessive noise disturbance, all of which may require intervention by local law enforcement.

(C) Consumption of Cannabis by Minors who are under the legal age to consume Cannabis in the state is harmful to the Minors themselves and poses an immediate threat to the public health, safety, and welfare in that it increases Cannabis use by Minors, it detrimentally affects the mental and physical health of Minors, and it increases rates of driving under the influence, all of which may require intervention by local law enforcement.

(D) The prohibitions found in this chapter are reasonable and expected to deter the consumption of alcoholic beverages and/or cannabis by minors by holding responsible persons who know of, or should know of, the illegal conduct yet fail to stop or prevent it. In addition, the revenue received by the city after cost reimbursement, will be directed toward alcohol and cannabis abuse and prevention education programs in the community.
(Ord. 2007-006, passed 9-10-07)

§ 134.02 INTENT AND PURPOSE.

The purposes of this chapter are:

- (A) To protect public health, safety, and general welfare;
- (B) To enforce laws prohibiting the service to and consumption of alcoholic beverages and/or cannabis to minors; and
- (C) To reduce the costs of providing law enforcement, fire, and other emergency response services to premises where alcoholic beverages and/or cannabis are served to or consumed by a minor, by holding the responsible person, social host, and/or landowners responsible for the costs associated with providing law enforcement and other emergency response services.
(Ord. 2007-006, passed 9-10-07)

§ 134.03 DEFINITIONS.

For purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT. Any person over the age of 18 years.

ALCOHOL. Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

ALCOHOLIC BEVERAGE. Includes any liquid or solid material intended to be ingested by a person which contains ethanol, also known as ethyl alcohol, drinking alcohol, or alcohol, including, but not limited to, alcoholic beverages as defined in Cal. Bus. & Prof. Code § 23004, intoxicating liquor, malt beverage, beer, wine, spirits, liqueur, whiskey, rum, vodka, cordials, gin, and brandy, and any mixture containing one or more alcoholic beverages. *ALCOHOLIC BEVERAGE* includes a mixture of one or more alcoholic beverages whether found or ingested separately or as a mixture.

CANNABIS. Cannabis has the same meaning as that term is defined by Cal. Business and Professions Code § 26001. Includes any liquid or solid material intended to be smoked or ingested by a person which contains THC,

also known as Tetrahydrocannabinol. In the enforcement of this Chapter, cannabis is adult use cannabis and not medicinal cannabis used by a qualified patient.

FAMILY GATHERING. A gathering where each minor present is supervised by his or her parent or legal guardian.

GATHERING. A party, gathering, or event where a group of two or more persons have assembled or are assembling for a social occasion or social activity.

JUVENILE. Any person under the age of 18 years.

LEGAL GUARDIAN.

(1) A person who, by court order, is the guardian of the person of a minor; or

(2) A public or private agency with whom a minor has been placed by the court.

MINOR. Any person under the age of 21 years.

PARENT. A person who is a natural parent, adoptive parent, foster parent, or step-parent of another person.

PREMISES. Any residence or other private property, place, or premises, including any commercial or business premises.

QUALIFIED PATIENT. Qualified patient has the same meaning as that term is defined by Ca. Health and Safety Code §§ 11362.7.

RESPONSE COSTS. The costs associated with response by law enforcement, fire, or other emergency response providers to a gathering, including, but not limited to:

(1) Salaries and benefits of law enforcement, code enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a gathering, and the administrative cost associated with or attributed to such response(s);

(2) The cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a gathering;

(3) The cost of repairing any city equipment or property damaged, and the cost of the use of any such equipment in, responding to, remaining at, or leaving the scene of a gathering; and

(4) Any other allowable costs related to enforcement of §§ 134.04 and 134.05.

RESPONSIBLE PERSON. A person or persons with a right of possession in the premises including, but not limited to:

(1) An owner of the residence or other private property, place or premises, including any commercial or business premises;

(2) A tenant or lessee of the residence or other private property, place or premises, including any commercial or business premises;

(3) The landlord of another person responsible for the gathering;

(4) The person(s) in charge of the residence or other private property, place or premises, including commercial or business premises;

(5) The person(s) who organizes, supervises, officiates, conducts, or controls the gathering or any other person(s) accepting responsibility for such a gathering; and

(6) If a responsible person or social host for the party or gathering is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this chapter. To incur liability for response costs imposed by this chapter, the responsible person or social host for the gathering must be aware of the gathering, but need not be present at such gathering, which results in the imposition of response costs pursuant to this chapter.

SOCIAL HOST. A person who knowingly hosts, permits, or allows a gathering to take place where one or more minors consume one or more alcoholic beverages and/or cannabis on property owned or controlled by the person and the person knows or reasonably should have known that the minor is consuming or has consumed an alcoholic beverage and/or cannabis.

(Ord. 2007-006, passed 9-10-07)

§ 134.04 CONSUMPTION OF ALCOHOL AND/OR CANNABIS BY MINOR PROHIBITED IN PUBLIC PLACE, PLACE OPEN TO PUBLIC, OR PLACE NOT OPEN TO PUBLIC.

Except as permitted by state law, it is unlawful for any minor to:

(A) Consume at any public place or any place open to the public any alcoholic beverage and/or cannabis; or

(B) Consume at any place not open to the public any alcoholic beverage and/or cannabis, unless in connection with the consumption of the alcoholic beverages that minor is being supervised by his or her own parent or legal guardian.

(Ord. 2007-006, passed 9-10-07) Penalty, see § 134.99

§ 134.05 HOSTING, PERMITTING, ALLOWING A PARTY, GATHERING, OR EVENT WHERE MINORS CONSUME ALCOHOLIC BEVERAGES AND/OR CANNABIS PROHIBITED.

(A) It is unlawful and a misdemeanor for any person having control of any premises to knowingly host, permit, or allow a gathering to take place at said premises where at least one minor consumes an alcoholic beverage and/or cannabis, whenever the person having control of the premises either knows a minor is or has consumed an alcoholic beverage and/or cannabis or reasonably should have known that a minor is or has consumed an alcoholic beverage and/or cannabis had the person taken all reasonable steps to prevent the consumption of alcoholic beverages and/or cannabis by a minor as set forth in division (B) of this section.

(B) It is the duty of any person having control of any premises, who knowingly hosts, permits or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages and/or cannabis by any minor at the gathering. Reasonable steps include, but are not limited to:

(1) Controlling access to alcoholic beverages and/or cannabis at the gathering;

(2) Controlling the quantity of alcoholic beverages and/or cannabis at the gathering;

(3) Verifying the age of persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure minors do not consume alcoholic beverages and/or cannabis while at the gathering; and

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

(C) This section shall not apply to conduct involving the use of alcoholic beverages that occurs exclusively between a minor and his or her parent or legal guardian, as permitted by Article I, § 4, of the California Constitution or if the event is a family gathering or if the minor is a qualified cannabis patient.

(D) This section shall not apply to any California Department of Alcoholic Beverages Control licensee at any premises regulated by the Department of Alcoholic Beverages Control.

(Ord. 2007-006, passed 9-10-07) Penalty, see § 134.99

§ 134.06 PRIMA FACIE EVIDENCE.

Whenever a responsible person and/or social host having control of the premises is present at the premises at the time that a minor obtains, possess, or consumes any alcoholic beverage and/or cannabis, it shall be prima facie evidence that such adult had the knowledge or should have had the knowledge, that the minor obtained, possessed, or consumed an alcoholic beverage and/or cannabis at the gathering.

(Ord. 2007-006, passed 9-10-07)

§ 134.07 ENFORCEMENT AUTHORITY.

The Police Department is authorized to administer and enforce the provisions of this chapter. The City Attorney and the Police Chief and/or their designees may exercise any enforcement powers provided by law.

(Ord. 2007-006, passed 9-10-07)

§ 134.08 PUBLIC NUISANCE AND RECOVERY OF RESPONSE COSTS.

(A) In addition to any other remedies available by law, a violation of § 134.04 and/or § 134.05 shall constitute a public nuisance, as an immediate threat to public health, safety, and welfare.

(B) As a public nuisance, the gathering of underage drinkers and/or cannabis consumers may be summarily abated by police by all reasonable means, singularly or in combination, including, but not limited to:

(1) An order requiring the gathering to be disbanded;

(2) Issuance of an administrative citation under this chapter; and/or

(3) Issuance of an administrative citation, misdemeanor citation and/or arrest of any law violators under any other applicable ordinances and/or statutes.

(C) When law enforcement, fire, or other emergency response provider responds to a gathering at which a minor obtains, possesses, or uses alcoholic beverages and/or cannabis within the city, all responsible persons and/or social host(s) shall be jointly and severally liable for the city's response costs to abate the nuisance.

(Ord. 2007-006, passed 9-10-07)

§ 134.09 BILLING AND COLLECTION.

(A) The amount of response costs shall be deemed a debt owed to the city by the responsible person and/or social host. If a juvenile, by the juvenile's parents or guardians. Any person owing such costs shall be liable in a civil action brought in the name of the city for recovery for such costs, including reasonable attorney fees. Notice of the costs for which the responsible person is liable shall be mailed via first-class mail. The notice shall contain the following information:

(1) The name of the person(s) being held liable for the payment of such costs;

(2) The address of the private property or private premises where the party occurred;

(3) The date and time of the response;

(4) The law enforcement, fire, or emergency service provider(s) who responded; and

(5) An itemized list of the response costs for which the person(s) is being held liable. The responsible person must remit payment of the noticed response costs to the Police Department within 30 calendar days of the date of the notice. The payment of any such costs shall be stayed upon the filing of a timely appeal pursuant to § 134.11.

(B) The failure of any person to pay the penalties assessed by an administrative citation and/or response costs within the time specified on the administrative citation or response cost bill may result in the Police Chief or his or her authorized designee referring the matter to the Finance Department or other designated agent for collection. The Police Chief or his or her designated agent may pursue any other legal remedy to collect the penalties and/or response costs including the recording of a code enforcement lien pursuant to the procedures set forth in Chapter 98 of the city code.
(Ord. 2007-006, passed 9-10-07)

§ 134.10 SPECIAL FUND.

(A) There is hereby established a special fund for the purposes of receiving and expending civil penalties and response costs collected. This special fund shall be known and designated as the Prevention of Underage Drinking and Cannabis Use Fund.

(B) Expenditure of monies. The appropriation of all monies in the Prevention of Underage Drinking and Cannabis Use Fund shall be made exclusively for the purpose of prevention of underage drinking and cannabis use

programs within the city. The underage drinking and cannabis use programs shall include the enforcement of, education for, and prevention of underage drinking and /or cannabis use. Expenditures shall include, but not be limited to, purchase of equipment, contractual services, materials and supplies, or any other expenditures related to the prevention of underage drinking and cannabis use with the city. The administration of the fund shall conform to this code and all accounting principles practiced by the city.

(C) Accumulation of monies in the fund. The balance remaining in the Prevention of Underage Drinking and Cannabis Use Fund at the close of any fiscal year shall be deemed to have been provided for a specialized purpose and shall be carried forward and accumulated in said fund for the purposes set forth herein.

(Ord. 2007-006, passed 9-10-07)

§ 134.11 APPEALS.

(A) Any person upon whom is imposed a fine/penalty pursuant to § 134.99 and/or response costs pursuant to § 134.08 shall have the right to appeal the imposition of such fine/penalty or response costs pursuant to the appeal procedures set forth Chapter 98 of the city code.

(B) Failure to appeal shall constitute a failure to exhaust administrative remedies and result in the citation and/or response cost becoming a final administrative enforcement order.

(Ord. 2007-006, passed 9-10-07)

§ 134.20 PENALTY.

(A) Each incident in violation of §§ 134.04 and 134.05 shall constitute a separate offense.

(B) In addition to any other remedies available by law, including criminal prosecution, the city may seek administrative penalties, response costs, and any other cost associated with enforcement of §§ 134.04 and 134.05, through all remedies or procedures provided by statute, ordinance, or law. Sections 134.04 and 134.05 shall not limit the authority of peace officers to make arrests for any criminal offense arising out of conduct regulated by §§ 134.04 and 134.05. If a violation of § 134.04 and/or § 134.05 is prosecuted administratively, the mandatory minimum penalty shall be \$500 for the first offense, \$1,000 for a second offense, and \$1,500 for a third offense in a 12-month period.

(Ord. 2007-006, passed 9-10-07)

§134.30 SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion 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 section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 2: This Ordinance shall become effective thirty (30) days from and after its final passage (January 10, 2020), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

SECTION 3. The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on November 12, 2019. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 10th day of December, 2019; motioned by Councilmember District 3 Cal Campbell, seconded by Vice Mayor (CM-D4) Darlene Barber-Martinez; moved said ordinance by a City Council vote of 5-0:

AYES: Campbell, Fosi, Uribe, Barber-Martinez, and Mayor O'Brien
NAYS: None
ABSENT: None
ABSTAINED: None

ATTEST:

APPROVED:

(ORIGINAL DOCUMENT IS ON FILE WITH THE CITY CLERK)

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

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Tom P. Hallinan
City Attorney