



**CITY OF GREAT FALLS
COMMISSION AGENDA REPORT**

Item: Ordinance 3044; Social Host Ordinance
From: Chad G. Parker, Acting City Attorney
Initiated By: Chad G. Parker, Acting City Attorney
Presented By: Chad G. Parker, Acting City Attorney
Action Requested: Adopt Ordinance 3044, as amended.

Suggested Motion:

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Ordinance 3044 as amended.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls the vote.

Staff Recommendation: It is the recommendation of the Acting City Attorney that the City Commission adopt Ordinance 3044 as amended.

Background: At the regularly scheduled Commission Meeting held on September 1, 2009, Commissioner Beecher moved that Ordinance 3044 be removed from the table for a vote to adopt the Ordinance as amended. The motion was not seconded and so the Ordinance was not removed from the table. Given that no motion was made to "table Ordinance 3044 indefinitely" or to "deny Ordinance 3044" by any other Commissioner, the Ordinance can be brought up again at a subsequent meeting. Commissioner Rosenbaum commented that he believed the matter should be addressed with a full commission present (including Mayor Stebbins who was ill on the night of September 1, 2009), which can be reflected as a desire for postponement of the vote on Ordinance 3044. Therefore, the motion to adopt Ordinance 3044 may be brought up at the September 15, 2009 Commission Meeting.

Ordinance 3044 is being presented with amendments which are intended to reflect the will of the Commission as a whole and seek to provide adequate notice of Ordinance 3044's interaction with Montana State Law. Specifically, a definition for the term, "gathering" has been included as well as a reference to § 16-6-305, which provides a limited exception from culpability under law for parents and other individuals who provide an alcoholic beverage to a person under 21 years of age in a non-intoxicating quantity or for medicinal purposes, upon the prescription of a physician, or by an ordained minister or priest in connection with a religious observance.

Further amendments include a revision of the penalty section to reflect a no-jail penalty for a first offender and to insert language suggested by the Great Falls Landlord Association, which addresses their concerns of vicarious liability under the Ordinance.

These amendments have been chosen in deference to other potential and suggested amendments because they properly reflect the municipality's jurisdictional limitations on penalties and because they do not hinder judicial discretion beyond what the State legislature has already designated for other alcohol-related offenses in Montana. Further, the amendments serve to provide notice of the "knowledge" element required for culpability under the ordinance and to whom it applies while ensuring there are no equal protection faults included in its text; i.e., the language does not provide variable exclusions to separate classes of Defendants based on age or other constitutionally barred criteria.

Concurrences: The Police Department, City Administration, the Legal Department, the Cascade County DUI Task Force, and the EUDL Coalition support its execution.

Fiscal Impact: None.

Alternatives: Require City Law Enforcement to continue using State law §§ 45-5-622, 45-5-623, and 45-5-624 MCA as their primary tool to combat underage drinking. However, these statutory sections do not adequately address the source of incidents where the crime of minor in possession of alcohol are committed nor do they affect all age groups capable of committing the offense.