

**REGULAR**

**NUMBER:** 280

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS IMPOSING LIABILITY ON SOCIAL HOSTS WHO ALLOW OR ENCOURAGE UNDERAGE ABUSE OF ALCHOHOL

**HISTORY:** This Ordinance was introduced (first reading) by the City Council of the City of Milpitas at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_, and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**RECITALS AND FINDINGS:**

**WHEREAS**, owners, tenants and licensees of private property sometimes furnish or allow underage persons to access alcohol in non-commercial settings, thereby leading to underage drinking; and

**WHEREAS**, underage consumption of alcohol is harmful to the underage persons themselves and is also a threat to public health, safety, quiet enjoyment of residential property and general welfare, and constitutes a public nuisance.

**NOW, THEREFORE**, the City Council of the City of Milpitas does ordain as follows:

**SECTION 1. RECORD AND BASIS FOR ACTION**

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

**SECTION 2. NEW CHAPTER 7 OF TITLE V (PUBLIC HEALTH, SAFETY AND WELFARE)**

The following new Chapter 7 is hereby added to Title V of the Milpitas Municipal Code:

**Chapter 7. LIABILITY OF SOCIAL HOSTS WHO ALLOW OR ENCOURAGE UNDERAGE ABUSE OF ALCOHOL**

**Sections:**

**7.01 Findings and Purpose**

**7.02 Definitions**

**7.03 Underage Gatherings Prohibited**

**7.04 Separate Violation for Each Incident**

**7.05 Criminal and Civil Penalties for Violation of the Ordinance**

**7.06 Billing and Collection**

**7.07 Protected Activities (Exceptions)**

**7.01 Findings and Purpose**

- A. Underage persons sometimes obtain and consume alcoholic beverages at social events on private property under the control of an adult who knows of such conduct or should reasonably know of such conduct, but fails to stop it.
- B. Underage consumption of alcoholic beverages poses an immediate threat to the public health, safety and welfare in that it increases alcohol abuse and addiction in underage persons, 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 City police and fire officials.
- C. When City law enforcement and emergency service providers respond to a disturbance involving underage consumption of alcoholic beverages at private parties, scarce public resources must be used to manage and abate the incident.

Furthermore, such disturbances divert law enforcement resources away from other pressing service calls in the community, thereby endangering the general public.

- D. The prohibitions found in this Chapter are reasonable and expected to deter the consumption of alcoholic beverages by underage persons by holding responsible adults who know of or encourage the illegal conduct, yet fail to stop it.

## **7.02 Definitions**

For the purposes of this Chapter, the following definitions shall apply to the listed terms:

- A. “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- B. “Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one 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.
- C. “Juvenile” means any person under eighteen (18) years of age.
- D. “Residence” or “other private property” shall mean a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, or structure or portion thereof which is not regulated by the California Department of Alcoholic Beverage Control, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function location, and whether owned, leased, rented, or used with or without compensation.
- E. “Responsible person” shall mean a person or persons as defined below.
  - 1. Owner(s) of the residence or other private property where an underage gathering is taking place, provided that if said owner has rented or leased said property to another person, the owner shall not be considered a “responsible person” subject to this Ordinance until said owner receives notice of at least one previous underage gathering on its property in the preceding twelve (12) months. Notice shall be by a copy of the citation transmitted via certified mail to the owner of the residence as recorded by the last equalized assessment roll of the Santa Clara County Assessor. Furthermore, such an owner shall not be considered a responsible person where he or she has commenced and is diligently proceeding with eviction proceedings against the responsible lessee and/or tenant of the property where the underage gathering occurred, as determined by City staff;
  - 2. A tenant or lessee of the residence or other private property where an underage gathering is taking place;
  - 3. Person(s) in charge of the residence or other private property;
  - 4. Person(s) who organizes, supervises, serves, officiates, conducts or otherwise generally controls the gathering or any other person(s) accepting responsibility for such a gathering; and
  - 5. Parent(s) or legal guardian(s) of a responsible person who is a juvenile.

F. "Underage gathering" means a party or gathering of two or more underage persons at a residence or other private property in the City at which alcoholic beverages are being consumed or possessed by one or more underage persons.

G. "Underage person" shall mean any person under twenty-one (21) years of age.

**7.03 Underage Gatherings Prohibited**

A. An underage gathering of two or more persons at a residence or other private property in the City at which alcoholic beverages are being consumed or possessed by one or more underage persons shall constitute a public nuisance, and an immediate threat to public health and safety, and is prohibited.

B. As a public nuisance, the underage gathering 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 a criminal citation to a responsible person and/or arrest of any law violators under any other applicable ordinances and/or statutes; and
3. Recovery of response costs from a responsible person.

**7.04. Separate Violation for Each Incident**

Each incident in violation of Section 7.03 shall constitute a separate offense.

**7.05 Criminal and Civil Penalties for Violation of the Ordinance**

A. Violations of this Chapter may be criminally prosecuted if the responsible person knowingly caused or permitted the violation to occur, or reasonably should have known that a violation would occur. A violation of this Chapter is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for a period not to exceed six (6) months, or by both fine and imprisonment. At the discretion of the charging officer and/or City Attorney, violations of this Chapter may also be charged as infractions pursuant to Section I-1-4.09-1.

B. In addition to all other available remedies, all responsible persons in violation of this Chapter, regardless of whether they knew or should have known that a violation would occur, shall be jointly and severally liable for all response costs. Such response costs shall be determined by calculating those reasonable and necessary costs directly incurred by the City for a response to an underage gathering, and shall include the cost of providing police, firefighting, and/or other emergency services at the scene of the underage gathering, including but not limited to:

1. Salaries and benefits of law enforcement and/or emergency personnel for the amount of time spent responding to, remaining at, or otherwise dealing with underage gatherings, and the administrative costs attributable to such response(s);

2. The cost of any medical treatment to or for any law enforcement personnel injured in responding to, remaining at or leaving the scene of an underage gathering; and
3. The cost of repairing any City equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of an underage gathering.

#### **7.06 Billing and Collection**

Any costs or fines imposed for violation of this Chapter, including any fines pursuant to other codes or statutes to which violations of this Chapter are subject, and any administrative costs or other expenses of enforcement, response costs as defined in this Chapter, and the costs or expenses associated with the abatement of a nuisance condition pursuant to this Chapter, may be enforced by the recordation of a lien on the real property of a responsible person where the violation occurred in accordance with and subject to the requirements of this Code.

#### **7.07 Protected Activities (Exceptions)**

This Ordinance shall not apply to legally-protected religious activities.

### **SECTION 3. SEVERABILITY**

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

### **SECTION 4. EFFECTIVE DATE AND POSTING**

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.