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(O-2006-90)

ORDINANCE NUMBER O- 19482 (NEW SERIES)

DATE OF FINAL PASSAGE APR 26 2006

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 6, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 56.60, 56.62, AND 56.63, AND ADDING SECTIONS 56.64 AND 56.65, RELATING TO THE PROHIBITION AGAINST HOSTING, PERMITTING, OR ALLOWING GATHERINGS WHERE MINORS ARE CONSUMING ALCOHOLIC BEVERAGES.

WHEREAS, the City of San Diego, pursuant to the police powers delegated to it by the California Constitution and as a charter city, has the authority to enact laws that promote the public health, safety, and general welfare of its residents; and

WHEREAS, the City of San Diego, acting through the City Council [the Council] finds that parties, gatherings, or events [gatherings] on private property where alcoholic beverages are consumed by minors, who are under the legal age to consume alcohol in the State of California, are harmful to the minors themselves and a threat to public health, safety, quiet enjoyment of residential property, and general welfare; and

WHEREAS, the Council finds that minors often obtain alcoholic beverages 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 by minors; further, the Council finds that persons responsible for the occurrence of such gatherings often fail to take reasonable steps to prevent the consumption of alcoholic beverages by minors at these gatherings; and

WHEREAS, control of gatherings on private property where alcoholic beverages are consumed by minors is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public; and

WHEREAS, police officers often are required to make multiple responses to the location of a gathering where alcoholic beverages are consumed by minors in order to disperse uncooperative participants, causing a drain on public safety resources and in some cases, leaving other areas of the City with delayed police response; and

WHEREAS, problems associated with gatherings where alcoholic beverages are consumed by minors are difficult to prevent and deter unless the City of San Diego Police Department has the legal authority to arrest offenders and direct the host to disperse the gathering; and

WHEREAS, police ability to abate gatherings on private property where alcohol is consumed by minors will result in a decrease in abuse of alcohol by minors, physical altercations and injuries, neighborhood vandalism, and excessive noise disturbance, thereby improving public safety; and

WHEREAS, on May 6, 2003, the Council adopted Ordinance O-19172 N.S., to amend the San Diego Municipal Code by adding Sections 56.60, 56.61, 56.62, and 56.63, making it unlawful for any minor, under the age of 21, to consume alcohol in any public place, place open to the public, or place not open to the public unless supervised by the minor's parent or guardian, and unlawful for any person to allow or host a party where three or more minors are present and alcohol is being consumed by a minor; and

WHEREAS, the Council made the following findings and declarations on May 6, 2003: that the purpose of Ordinance O-19172 N.S. was (1) to protect public health, safety, and general

welfare; (2) to enforce laws prohibiting the consumption of alcohol by minors; and (3) to reduce the costs of providing police services to parties, gatherings, or events requiring a response by requiring party hosts to ensure minors are not consuming alcoholic beverages; and

WHEREAS, the Council finds and declares that the original purpose of Ordinance O-19172 was justified and a proper exercise of the power and authority of a charter city to regulate consumption of alcohol by minors because this consumption of alcohol by minors impacts the health, safety, and general welfare of San Diego's citizens and communities; and

WHEREAS, on September 7, 2004, the Appellate Division of the San Diego Superior Court held, in an unpublished opinion, that San Diego Municipal Code section 56.62(a), as originally enacted on May 6, 2003, was "constitutionally impermissible" because of "the lack of a mens rea [or intent] in this ordinance"; and

WHEREAS, the Council hereby amends San Diego Municipal Code Sections 56.60, 56.62, and 56.63, and adds Sections 56.64 and 56.65 to add the requisite intent to the ordinance to conform with state and federal law and to set forth the remedies available to the City for violations of this Ordinance; and

WHEREAS, it is the intent of the Council that criminal liability under San Diego Municipal Code Section 56.62, as amended herein, applies to any person in control of private property who knowingly hosts, permits, or allows a party, gathering, or event where minors are present and an alcoholic beverage is being consumed by any minor, where the person in control of the private property knows or reasonably should know that a minor has consumed an alcoholic beverage; and

WHEREAS, it is the further intent of the Council to impose a duty on any person having control of any residence or other private property, place, or premises, including any commercial

premises, who knowingly hosts, permits, or allows a party, gathering, or event, to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering; NOW, THEREFORE:

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 6, of the San Diego Municipal Code is amended to read by amending Sections 56.60, 56.62, 56.63, and adding 56.64 and 56.65, as follows:

§56.60 Definitions

Each word or phrase that is defined in Sections 56.60, 56.61, 56.62, 56.63, and 56.64 appears in the text of these Sections in italicized letters. For purposes of Sections 56.61 through 56.64, the following definitions shall apply:

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

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 (1) 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.

Gathering is a party, gathering, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

Legal Guardian means (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 means any person under twenty-one years of age.

Parent means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

Premises means any residence or other private property, place, or premises, including any commercial or business premises.

Response costs are the costs associated with responses by law enforcement, fire, and 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 costs attributable 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 the enforcement of Sections 56.61 and 56.62.

§56.61 [No change in text.]

§56.62 **Hosting, Permitting, or Allowing a Party, Gathering, or Event Where Minors Consuming Alcoholic Beverages Prohibited**

(a)(1) 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* by any *minor* at the *gathering*. Reasonable steps are controlling access to

alcoholic beverages at the *gathering*; controlling the quantity of *alcoholic beverages* present at the *gathering*; verifying the age of persons attending the *gathering* by inspecting drivers licenses or other government-issued identification cards to ensure that *minors* do not consume *alcoholic beverages* while at the *gathering*; and supervising the activities of *minors* at the *gathering*.

- (2) It is unlawful 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*, whenever the person having control of the *premises* either knows a *minor* has consumed an *alcoholic beverage* or reasonably should have known that a *minor* consumed an *alcoholic beverage* had the person taken all reasonable steps to prevent the consumption of an *alcoholic beverage* by a *minor* as set forth in subsection (a)(1) of this Section.
- (b) 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, Section 4, of the California Constitution.
- (c) This Section shall not apply to any California Department of Alcoholic Beverage Control licensee at any *premises* regulated by the Department of Alcoholic Beverage Control.

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§56.63 Mandatory Minimum Fines

Criminal violations of Sections 56.61 and 56.62 shall be punishable, on a first offense, by a mandatory minimum fine of \$100.00, plus statutory penalty assessments, with neither fine nor assessments stayed or suspended, and, on second and subsequent offenses, by a fine of \$200.00, plus statutory penalty assessments, with neither fine nor assessments stayed or suspended.

Section 2. That Chapter 5, Article 6 of the San Diego Municipal Code is further amended by adding Sections 56.64 and 56.65 to read as follows:

§56.64 Reservation of Legal Options

Violations of Sections 56.61 and 56.62 may be prosecuted by the City of San Diego, in the name of the People of the State of California, criminally, civilly, and/or administratively as provided by the Municipal Code. The City of San Diego may seek administrative fees and *response costs* associated with enforcement of Sections 56.61 and 56.62, through all remedies or procedures provided by statute, ordinance, or law. Sections 56.61 and 56.62 shall not limit the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by Sections 56.61 and 56.62, nor shall they limit the City of San Diego's or the People of the State of California's ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of Sections 56.61 and 56.62.

§56.65 Local Authority

Sections 56.60, 56.61, 56.62, 56.63, and 56.64 shall not apply where prohibited or preempted by state or federal law.

Section 3. That a full reading of this Ordinance is dispensed with prior to its final passage, since a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 4. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Joan F. Dawson
Joan F. Dawson
Deputy City Attorney

JFD:sc
02/09/06
Aud.Cert.:N/A
Or.Dept:PD
O-2006-90

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of APR 18 2006.

ELIZABETH S. MALAND, City Clerk
By [Signature]
Deputy City Clerk

Approved: 4-26-06
(date)

[Signature]
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor