

ORDINANCE NUMBER O- 21058 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 25 2019

AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 6, DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING ARTICLE 6, AMENDING SECTION 56.60, AND RETITLING AND AMENDING SECTIONS 56.61 AND 56.62, RELATING TO THE PROHIBITION AGAINST HOSTING, PERMITTING, OR ALLOWING GATHERINGS WHERE MINORS CONSUME ALCOHOLIC BEVERAGES, MARIJUANA, OR CONTROLLED SUBSTANCES.

WHEREAS, the City of San Diego, a Charter City, has authority to enact laws that protect the public health, safety, and general welfare of its residents pursuant to the police power delegated to it by the California Constitution; and

WHEREAS, in furtherance of this authority, the Council of the City of San Diego (Council) adopted an ordinance, commonly known as the “Social Host Ordinance” (Ordinance), prohibiting the consumption of alcoholic beverages by minors in certain locations, and imposing a duty on those in control of a premises who host, permit, or allow a gathering at the premises (party hosts) to prevent minors from consuming alcoholic beverages while at the gathering (San Diego Ordinance O-19172 (May 6, 2003)); and

WHEREAS, in adopting the Ordinance, the Council found that “police ability to abate gatherings where alcohol is consumed by minors on private property 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, the Ordinance was amended in 2006 to add an element of intent (San Diego Ordinance O-19482 (April 26, 2006)) (amended Ordinance); and

WHEREAS, the amended Ordinance affirmed the Council’s previous legislative findings, and reaffirmed that “parties, gathering, 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 made additional findings in the amended Ordinance regarding the impact on public safety resources, specifically, that “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, the amended Ordinance clarified enforcement options and allowed recovery of response costs; and

WHEREAS, the Council now affirms and incorporates all findings made in support of Ordinance O-19172 (May 6, 2003) and Ordinance O-19482 (April 26, 2006); and

WHEREAS, it is necessary to amend the Municipal Code to include marijuana and controlled substances within the duties and liabilities of minors and party hosts due to the legalization of certain marijuana activities, and the continued proliferation of controlled substances; and

WHEREAS, in 2016, use, possession, and cultivation of certain amounts of marijuana for personal use by adults age twenty-one and older were legalized by Proposition 64 (November 8, 2016); and

WHEREAS, marijuana use continues to gain social acceptance and a lower perception of risk among adults and minors; and

WHEREAS, unprescribed or improper use of controlled substances is illegal under federal, state, and local law; and

WHEREAS, recently, controlled substances, including fentanyl and other opioids, have proliferated in the illegal controlled substance market; and

WHEREAS, this rise in illegal controlled substance activity illustrates the need to protect the public and minors from the dangerous and negative effects of controlled substances that may be provided to and consumed by minors at gatherings; and

WHEREAS, these factors illustrate the need to include marijuana and controlled substances in the Ordinance to preserve public health and safety, and protect minors from the risks and negative effects associated with underage use of marijuana and use of controlled substances; and

WHEREAS, many other cities and counties in California have taken similar steps to protect public health and safety, and the health and safety of minors from the dangers of consuming alcohol, marijuana, and controlled substances at social gatherings; 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 by retitling Article 6 to read as follows:

**Article 6: Disorderly Conduct**

Section 2. That Chapter 5, Article 6, Division 00 of the San Diego Municipal Code is amended by amending section 56.60 to read as follows:

**Article 6: Disorderly Conduct**

**Division 00**

**§56.60 Definitions**

For purposes of sections 56.61 through 56.64, defined terms appear in italics. The following definitions apply to sections 56.61 through 56.64:

*Alcohol* through *Alcoholic beverage* [No change in text.]

*Controlled substance* means any drug or substance scheduled in the federal Controlled Substances Act and related regulations, as may be amended from time to time; the California Uniform Controlled Substances Act, as may be amended from time to time; or any drug or substance prohibited by Chapter 5, Article 2, Division 33 of this Code.

*Gathering* through *Legal Guardian* [No change in text.]

*Marijuana* has the same meaning as “cannabis” in California Health and Safety Code section 11018.

*Marijuana product* has the same meaning as “cannabis product” in California Health and Safety Code section 11018.1.

*Minor* through *Response costs* [No change in text.]

Section 3. That Chapter 5, Article 6, Division 00 of the San Diego Municipal Code is amended by retitling and amending sections 56.61 and 56.62 to read as follows:

**Article 6: Disorderly Conduct**

**Division 00**

**§56.61 Consumption of Alcohol, Marijuana, Marijuana Products, or Controlled Substances by Minor Prohibited**

- (a) Except as permitted by state law, and subject to subsection (b), it is unlawful for any *minor* to:
- (1) consume at any public place or any place open to the public any *alcoholic beverage, marijuana, marijuana product, or other controlled substance*;
  - (2) consume at any place not open to the public any *alcoholic beverage*, unless the *minor's* consumption of the *alcoholic beverage* occurs exclusively between the *minor* and his or her *parent or legal guardian*, as permitted by Article I, Section 4, of the California Constitution;
  - (3) consume at any place not open to the public any *marijuana, marijuana product, or other controlled substance*.
- (b) Section 56.61 does not apply to the consumption of a *controlled substance* as prescribed to the *minor* by a licensed medical practitioner authorized to issue the prescription.

**§56.62      Hosting, Permitting, or Allowing a Gathering Where Minors Consume  
Alcoholic Beverages, Marijuana, Marijuana Products, or Controlled  
Substances Prohibited**

- (a)      It is the duty of any person having control of any *premises*, who knowingly hosts, permits, or allows a *gathering* at the *premises*, to take all reasonable steps to prevent the consumption of *alcoholic beverages*, *marijuana*, *marijuana products*, or other *controlled substances* by any *minor* at the *gathering*, except as legally prescribed. Reasonable steps are controlling access to *alcoholic beverages*, *marijuana*, and *marijuana products* at the *gathering*; prohibiting *controlled substances* at the *gathering*, except as legally prescribed; 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*, *marijuana*, or *marijuana products* while at the *gathering*; and supervising the activities of *minors* at the *gathering*.
- (b)      It is unlawful for any person having control of any *premises* to knowingly host, permit, or allow a *gathering* to take place at the *premises* where at least one *minor* consumes an *alcoholic beverage*, *marijuana*, *marijuana product*, or other *controlled substance*, whenever the person either knows a *minor* has consumed an *alcoholic beverage*, *marijuana*, *marijuana product*, or other *controlled substance* or reasonably should have known that a *minor* consumed an *alcoholic beverage*, *marijuana*, *marijuana*

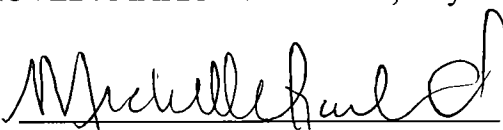
*product, or other controlled substance* had the person taken all reasonable steps set forth in subsection (a) of this Section.

- (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, Section 4, of the California Constitution.
- (d) 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.

Section 4. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 5. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Michelle A. Garland  
Deputy City Attorney

MAG:hm  
January 18, 2019  
Or.Dept: Police  
Doc. No.: 1868061\_7

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 19 2019.

ELIZABETH S. MALAND  
City Clerk

By *Stacy Cracy*  
Deputy City Clerk

Approved: 3/25/19  
(date)

*Kevin L. Faulconer*  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor



#52  
(O-2019-97)  
3/19/19

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: Struck-Out**  
**NEW LANGUAGE: Double Underline**

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AN ORDINANCE AMENDING CHAPTER 5, ARTICLE 6, DIVISION 00 OF THE SAN DIEGO MUNICIPAL CODE BY RETITLING ARTICLE 6, AMENDING SECTION 56.60, AND RETITLING AND AMENDING SECTIONS 56.61 AND 56.62, RELATING TO THE PROHIBITION AGAINST HOSTING, PERMITTING, OR ALLOWING GATHERINGS WHERE MINORS CONSUME ALCOHOLIC BEVERAGES, MARIJUANA, OR CONTROLLED SUBSTANCES.

**Article 6: Disorderly Conduct, ~~Places and Publications~~ — Gambling**

**Division 00**

**§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 sections 56.61 through 56.64, defined terms appear in italics. The The following definitions shall apply to sections 56.61 through 56.64:~~

*Alcohol* through *Alcoholic beverage* [No change in text.]

*Controlled substance* means any drug or substance scheduled in the federal Controlled Substances Act and related regulations, as may be amended from time to time; the California Uniform Controlled Substances Act, as may be amended from time to time;

or any drug or substance prohibited by Chapter 5, Article 2,

Division 33 of this Code.

*Gathering through Legal Guardian* [No change in text.]

*Marijuana* has the same meaning as “cannabis” in California

Health and Safety Code section 11018.

*Marijuana product* has the same meaning as “cannabis product” in

California Health and Safety Code section 11018.1.

*Minor through Response costs* [No change in text.]

§56.61 **Consumption of Alcohol, Marijuana, Marijuana Products, or  
Controlled Substances by Minor Prohibited ~~in Public Place,~~  
~~Place Open to Public, or Place Not Open to Public~~**

(a) Except as permitted by state law, and subject to subsection

(b), it is unlawful for any *minor* to:

~~(a)(1)~~ (1) consume at any ~~public place~~ public place or any  
place open to the public any *alcoholic beverage,*  
*marijuana, marijuana product, or other controlled*  
*substance; or*

~~(b)(2)~~ (2) consume at any place not open to the public any  
*alcoholic beverage, unless in connection with the*  
*consumption of the alcoholic beverage that minor*  
*the minor’s consumption of the alcoholic beverage*  
*occurs exclusively between the minor and is being*  
*supervised by his or her parent or legal guardian, as*

permitted by Article I, Section 4, of the California Constitution;

(3) consume at any place not open to the public any marijuana, marijuana product, or other controlled substance.

(b) Section 56.61 does not apply to the consumption of a controlled substance as prescribed to the minor by a licensed medical practitioner authorized to issue the prescription.

**§56.62 ~~Hosting, Permitting, or Allowing a Party, Gathering, or Event~~  
~~Where Minors Consuming~~ Consume Alcoholic Beverages,  
Marijuana, Marijuana Products, or Controlled Substances  
Prohibited**

~~(a)~~<sup>(1)</sup> It is the duty of any person having control of any *premises*, who knowingly hosts, permits, or allows a *gathering* at said the premises, to take all reasonable steps to prevent the consumption of *alcoholic beverages, marijuana, marijuana products, or other controlled substances, except as legally prescribed*, by any *minor* at the *gathering*. Reasonable steps are controlling access to *alcoholic beverages, marijuana, and marijuana products* at the *gathering*; prohibiting controlled substances at the gathering, except as legally prescribed; ~~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*, *marijuana*, or *marijuana products* while at the *gathering*; and supervising the activities of *minors* at the *gathering*.

(2)(b) It is unlawful for any person having control of any *premises* to knowingly host, permit, or allow a *gathering* to take place at said the premises where at least one *minor* consumes an *alcoholic beverage*, *marijuana*, *marijuana product*, or other *controlled substance*, whenever the person having control of the *premises* either knows a *minor* has consumed an *alcoholic beverage*, *marijuana*, *marijuana product*, or other *controlled substance* or reasonably should have known that a *minor* consumed an *alcoholic beverage*, *marijuana*, *marijuana product*, or other *controlled substance* 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)(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, Section 4, of the California Constitution.

~~(e)~~(d) 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.

MAG:hm  
January 18, 2019  
Or.Dept: Police  
Doc. No.: 1868065\_8

Passed by the Council of The City of San Diego on MAR 19 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 25 2019.

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By *Hy Mady*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 05 2019, and on MAR 25 2019.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By *Hy Mady*, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21058