



AGENDA ITEM NO. 11: 00 a.m.

COUNCIL MEETING February 6, 2007

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

February 6, 2007

**FROM:** JAMES C. SANCHEZ, CITY ATTORNEY *JS*

**BY:** CHARLOTTE M. HYLTON, DEPUTY CITY ATTORNEY *CMH*

**SUBJECT:** SOCIAL HOST ORDINANCE--PROHIBITIONS AGAINST CONSUMPTION OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSON(S) AND ALLOWING OR HOSTING GATHERINGS WHERE UNDERAGE PERSON(S) ARE CONSUMING ALCOHOLIC BEVERAGES.

**RECOMMENDATIONS:**

The attached ordinance provides a prohibition on underage drinking. If council is inclined to adopt a prohibition it should review the proposed ordinance and introduce it.

**EXECUTIVE SUMMARY:**

The proposed ordinance would amend the Fresno Municipal Code to make it a misdemeanor to permit, host or allow a party where two or more individuals are assembled and an underage person(s) is being served and/or consuming alcohol on private property. A misdemeanor is punishable by a fine of up to \$1,000.00 or by imprisonment for a period not to exceed six (6) months, or by both fine and imprisonment.

It is illegal under state law for an underage person(s) to possess alcoholic beverages in public, but not in places not open to the public. The ordinance does not apply when a parent is supervising the consumption of alcohol. Currently, there is no law which makes it unlawful to host a party where alcohol is served to or consumed by underage person(s). There are laws which address the symptoms of underage drinking at parties, such as laws against littering, urinating in public, driving under the influence and vandalism. However, these laws do not hold the host responsible for the impact their party has had on the public or the underage person(s).

A question which has arisen, involves a scenario where an adult parent leaves for the weekend and their son or daughter hosts a party where alcohol is served to or consumed by underage person(s) without the parents knowledge or consent. Is the parent in violation of the proposed ordinance? The answer is no. The ordinance requires that the suspected violator has "knowledge" of the party. The adult's presence on the premises is prima facie evident that they "knew" underage person(s) were being served or consuming alcohol. Finally, the prohibition against hosting a party where underage person(s) are served or consume alcohol does not apply when the party is supervised by the parent of each underage person(s) present. The purpose of the exception is to exclude religious and similar types of family gatherings from being subject to the ordinance.

**BACKGROUND:**

Consumption of alcoholic beverages by minors and parties where minors consume alcoholic beverages present a myriad of problems for the minor, the community, and law enforcement. Alcohol is the drug of choice for youth (National Center

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on Addiction and Substance Abuse, 2002), and the leading cause of death among teenagers (American Medical Association, Office of Alcohol/Drug Abuse, 2001). It's involved in the deaths of more teens than all other illicit drugs combined—by a four-to-one ratio (Drug Strategies, 1999). Underage drinking is a factor in nearly half of all teen automobile crashes and 50 to 65 percent of youth suicides (National Institute on Alcoholism and Alcohol Abuse). Alcohol abuse is linked to as many as two-thirds of all sexual assaults and date rapes of teen and college students, and it contributes substantially to homicides, suicides and fatal injuries (American Medical Association, Office of Alcohol/Drug Abuse, 2001). It is also a major factor in unprotected sex among youth (American Medical Association, Office of Alcohol/Drug Abuse, 2001).

While many believe that underage drinking is an inevitable “rite of passage” that adolescents can easily recover from because their bodies are more resilient, exactly the opposite is true. The brain changes dramatically during adolescence and this growth can be seriously inhibited by alcohol consumption. The damage alcohol can cause to the adolescent brain is often long-term and irreversible (Brown, S.A., Taper, S.F., Granholm, E. & Delis, D.C., 2000). Even short-term or moderate drinking impairs learning and memory far more among youth than adults (Brown et al., 2000). Adolescents need to drink only half as much as adults to suffer the same negative effects (Pyapali, G.K., Turner, D.A., Wilson, W.A., & Swartzwelder, S.H., 1999).

Youth who begin drinking alcohol before age 15 are four times more likely to become dependent on alcohol than those who wait to begin drinking until age 21 (Grant, B.F., and Dawson, D.A., 1997). Those who begin drinking before age 13 are twice as likely to have unplanned sex during college, and more than twice as likely to have unprotected sex during college, as to those who do not start drinking until after age 19 (Hingson, R.W., Heeren, T., Winter, M.R., & Wechsler, H., 2003).

Because of the negative consequences of underage drinking coupled with the fact that, on average, young people begin drinking at 13.1 years of age (U.S. Department of Health and Human Services, 2000)—it is critical to address youth access to alcohol proactively through all sources, including social sources. Recent research invalidates the notion that adults can protect youth from the negative consequences of alcohol use by allowing them to drink in a private setting. It is clear that even if young people do not leave or drive after drinking at a home party, the long-term consequences pose unacceptable risks to youth.

In addition, home parties have repeatedly been defined as the primary source by which youth obtain alcohol (Combating Underage Drinking Survey, 1999, and Mayer, Forster, Murray, and Wagenaar, 1998). Studies indicate that most underage drinking “occurs primarily outside commercial establishments and most often in residences and open areas like beaches and parks.” (Forster, Murray, and Wagenaar, 1998). National research shows that 57 percent of minors reported drinking at friends’ homes (Combating Underage Drinking Survey, 1999).

### **OPTIONS:**

1. Council may introduce the proposed Social Host Ordinance.
2. Council may introduce a modified ordinance.
3. Council may decide to take no further action on the matter.

ORDINANCE OF THE COUNCIL OF THE CITY OF FRESNO  
PROPOSED AND INITIATED BY \_\_\_\_\_  
MOVED BY \_\_\_\_\_ SECONDED BY \_\_\_\_\_

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADDING  
ARTICLE 21 TO CHAPTER 9 OF THE FRESNO MUNICIPAL CODE,  
RELATING TO PROHIBITIONS AGAINST CONSUMPTION OF  
ALCOHOLIC BEVERAGES BY UNDERAGE PERSON(S) AND  
ALLOWING OR HOSTING GATHERINGS WHERE UNDERAGE  
PERSON(S) ARE CONSUMING ALCOHOLIC BEVERAGES.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 21 is hereby added to Chapter 9 of the Fresno Municipal Code is added to  
read:

ARTICLE 21

SOCIAL HOST ORDINANCE CONCERNING  
CONSUMPTION OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSON(S).

Section 9-2101.	Short Title.
9-2102.	Findings and Intent.
9-2103.	Purpose.
9-2104.	Definitions.
9-2105.	Consumption of Alcohol by Underage Person(s).
9-2106.	Prima Facie Evidence.
9-2107.	Separate Violation for Each Incident.
9-2108.	Penalties for Violation and Enforcement Remedies.
9-2109.	Reservation of Legal Options.

SECTION 9-2101. SHORT TITLE. This Article shall be known and cited as the  
“Social Host Ordinance.” When used in this article, “this article” means the Social Host  
Ordinance.

SECTION 9-2102. FINDINGS AND INTENT. The Council finds and  
determines as follows:

(a) The occurrence of parties on private property where alcohol is served to or consumed by underage person(s) is harmful to the underage person(s) and a threat to public health, safety, quiet enjoyment of property, and the general welfare, of the communities where such parties are held.

(b) Underage person(s) often obtain alcoholic beverages at parties held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the underage service and/or consumption. Person(s) responsible for the occurrence of parties on private property over which they have possession or control have failed to ensure that alcoholic beverages are neither served to nor consumed by underage person(s) at these parties.

(c) Control of parties on private property where underage person(s) are being served or consuming alcohol is necessary because such activity poses a threat to the peace, health, safety, or general welfare of the public. Police ability to abate gatherings where alcohol is served to or consumed by underage person(s) on private property will result in a decrease in abuse of alcohol by underage person(s), physical altercations and injuries, neighborhood vandalism, and excessive noise disturbance thereby improving public safety.

(d) Problems associated with such parties at which alcoholic beverages are served to or consumed by underage person(s) are difficult to prevent and deter unless law enforcement has the legal authority to direct the host to disperse the party.

(e) Law enforcement, fire and other emergency response services personnel have and are required to respond, sometimes on multiple occasions, to parties on private property at which alcoholic beverages are served to or consumed by underage person(s). Responses to such parties result in a disproportionate expenditure of public safety resources and cause a drain of staff, leaving other areas of the City with inadequate protection.

(f) Person(s) held responsible for abetting or tolerating parties will be more likely to properly supervise and stop such conduct at parties held on private property under their possession and control. The prohibitions found in this chapter are reasonable and expected to deter the consumption of alcoholic beverages by underage person(s) by holding person(s) who knowingly allow service to or consumption by underage person(s) responsible.

SECTION 9-2103. PURPOSE. The Council finds and declares that the purpose of this ordinance is:

- (a) to protect public health, safety and general welfare;
- (b) to enforce laws prohibiting the service to and consumption of alcohol by underage person(s); and
- (c) to reduce the costs of providing law enforcement, fire and other emergency response services to parties by imposing a civil fee against social hosts and landowners (including landlords) and for the recovery of costs associated with providing law enforcement, fire and other emergency response services to parties where alcoholic beverages are served to or consumed by underage person(s).

SECTION 9-2104. DEFINITIONS. The following terms as used in this article shall have the meaning ascribed to them in this section as follows:

(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) The term "underage person(s)" means any person under twenty-one (21) years of age.

(d) The term "juvenile" means any person under eighteen (18) years of age.

(e) The term "party or parties," means an assembly of two (2) or more individuals for any purpose, unless all of the individuals attending the assembly are members of the same household or immediate family.

(f) The term "private property" shall mean a hotel or motel room or bed and breakfast unit, home, yard, apartment, condominium, mobile home, cottage, cabin, trailer, tent or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or for a party or other social function, and whether owned, leased, rented, or used with or without compensation.

(g) The term “responsible person” means a person or persons with a right of possession in the residence or other private property on which a party is conducted, including, but is not limited to:

1. An owner of the private property;
2. A tenant or lessee of the private property;
3. The person(s) in charge of the private property; and
4. The person(s) who organizes, supervises, officiates,

conducts or controls the party or any other person(s) accepting responsibility for such party.

(h) The term “person(s)” includes, but is not limited to, any business, corporation or other organization.

#### SECTION 9-2105. CONSUMPTION OF ALCOHOL BY UNDERAGE

PERSON(S). Except as permitted by Article I, Section 4, of the California Constitution, it is unlawful for any person to:

(a) Knowingly permit, allow, or host a party on his or her private property or premises under his or her control where underage person(s) are present and alcoholic beverages are being served to or consumed by any underage person(s).

(b) This section shall not apply to conduct involving the service to or consumption of alcoholic beverages, which occurs exclusively between an underage person(s) and his or her parent or legal guardian.

(c) This section shall not apply to any location or place regulated by the California Department of Alcohol and Beverage Control.

SECTION 9-2106. PRIMA FACIE EVIDENCE. Whenever a responsible person is present at a private property at the time an underage person(s) is being served or consumes any alcoholic beverage thereon, it shall be prima facie evidence that such person(s) had the knowledge or should have had the knowledge specified in Section 9-2105.

SECTION 9-2107. SEPARATE VIOLATION FOR EACH INCIDENT. Each incident in violation of Section 9-2105 shall constitute a separate offense. An "incident" refers to each time law enforcement, fire, or other emergency personnel respond to a party, i.e., if a response is required multiple times to the same party on the same date, each response shall be a separate offense.

SECTION 9-2108. PENALTIES FOR VIOLATION AND ENFORCEMENT REMEDIES.

(a) A violation of this section shall constitute a misdemeanor punishable by a fine of \$1,000.00 or by imprisonment for a period not to exceed six (6) months, or by both fine and imprisonment.

SECTION 9-2109. RESERVATION OF LEGAL OPTIONS.

(a) The City of Fresno does not waive its right to seek other legal remedies or procedures. This section in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct currently regulated, nor do they limit in any way the prosecution's ability to initiate and prosecute a criminal prosecution for any violation of a criminal offense arising out of the same circumstances.

(b) If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinances. The Fresno City Council hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

SECTION 3. SEVERABILITY. The Council declares that the provisions of this ordinance are severable. If, for any reason, any sentence, paragraph, or section of this ordinance is determined by a court of competent jurisdiction to be invalid, such determination will not affect the validity of the remaining provisions of this ordinance.

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STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2007

Mayor Approval/No Return: \_\_\_\_\_, 2007

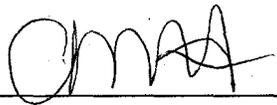
Mayor Veto: \_\_\_\_\_, 2007

Council Override Vote: \_\_\_\_\_, 2007

REBECCA E. KLISCH  
City Clerk

BY: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE

BY:  \_\_\_\_\_  
Deputy