

ORDINANCE NO. 2831

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE ESTABLISHING SOCIAL HOST LIABILITY FOR THE CONSUMPTION OF ALCOHOL BY PERSONS UNDER 21 YEARS OF AGE AT PARTIES, GATHERINGS, OR EVENTS

City Attorney Summary

This Ordinance adds Chapter 86 to Title 8 of the Garden Grove Municipal Code to establish social host liability for persons responsible for parties, gatherings, or events on private property, who know or should know of the consumption of alcohol by underage persons at such events, for allowing or facilitating the consumption of alcohol by underage persons at such events. In addition to liability for those persons responsible for parties, persons who facilitate the consumption of alcohol by underage persons at such events are also liable. Conduct that is exempt from liability under the Ordinance includes the following: (1) conduct involving the consumption of alcohol exclusively between an underage person and his or her parent or guardian; (2) conduct protected by the constitutions of the United States or California, including legally protected religious activities; (3) conduct for which local regulation is otherwise preempted by federal or state law; and (4) situations in which persons responsible for the party, gathering, or event seek assistance from law enforcement in a timely manner in order to prevent or stop underage consumption of alcohol.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY FINDS, DETERMINES, AND DECLARES AS FOLLOWS:

WHEREAS, the Center for Disease Control has determined that the consumption of alcohol by underage persons is a major public health problem and that alcohol use is the most commonly accessed and abused drug among youth in the United States;

WHEREAS, underage persons often obtain and consume alcoholic beverages at parties, gatherings or events held at private residences or other property, places or premises, whether rented, leased or owned, which are under the control of a person who knows or should know of the consumption of alcoholic beverages by underage persons. Persons responsible for the occurrence of parties, gatherings, or events on private property over which they have possession or control often fail to take reasonable steps to prevent the consumption of alcoholic beverages by underage persons;

WHEREAS, consumption of alcoholic beverages by underage persons is harmful to the underage persons, and poses an immediate threat to the public health, safety, and welfare in that it increases alcohol abuse by underage persons and leads to physical altercations and violent crimes, including sexual assault and other sexual offenses, addiction, truancy, accidental injury, assault, battery, vandalism, driving under the influence, vehicle collisions causing injury or death,

and excessive noise disturbance, all of which may require intervention by local law enforcement and other emergency responders;

WHEREAS, persons responsible for private property often fail to prevent the occurrence or reoccurrence of loud or unruly gatherings, including those where alcoholic beverages are consumed by underage persons, which seriously disrupt the quiet enjoyment of neighboring residents;

WHEREAS, the occurrence of parties, gatherings, or events on private property where alcoholic beverages are consumed by underage persons is harmful to the underage persons, and a threat to public health, safety, quiet enjoyment of residential property and to the general welfare, and therefore constitutes a public nuisance;

WHEREAS, the response of law enforcement and other emergency response providers to gatherings involving consumption of alcoholic beverages by underage persons often require extensive resources to manage the incident and may, on occasion, require response on multiple occasions to loud or unruly gatherings on private property. Further when law enforcement and other emergency response services personnel respond to gatherings involving the consumption of alcoholic beverages by underage persons, valuable resources are diverted from, and/or are not available for, other service calls in the community, thereby placing the community at increased risk;

WHEREAS, problems associated with parties, gatherings, or events at which alcoholic beverages are consumed by underage persons are difficult to deter unless the City has the legal authority to penalize such conduct;

WHEREAS, persons responsible for permitting parties, gatherings, or events on private property where alcoholic beverages are consumed by underage persons will be more likely to properly supervise, or to stop such conduct if the City has the legal authority to penalize such conduct;

WHEREAS, the intent of this Chapter is to protect the public health, safety, quiet enjoyment of property and general welfare. Its prohibitions are intended to deter the consumption of alcoholic beverages by underage persons by holding responsible those persons who know of, or should know of, such conduct and have ability to stop or prevent it, yet fail to do so. Persons who actively or passively aid, allow or tolerate such parties, gatherings, or events shall be held responsible for the nuisances created by such parties, gatherings, or events, and the costs associated with responding to such incidents; and

WHEREAS, pursuant to Article XI, Section 7 of the California Constitution, the City of Garden Grove is authorized to make and enforce within its limits all local

police, sanitary and other ordinances and regulations to protect the public health, safety, and general welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Chapter 86 is added to Title 8 of the Garden Grove Municipal Code as follows:

Section 8.86.010: Purpose and Intent: The purpose and intent of this Chapter are:

1. To reduce the consumption of alcoholic beverages by underage persons;
2. To protect public health, safety, general welfare and quiet enjoyment of properties neighboring the locations of parties, gatherings, or events at which underage persons are served and consume alcoholic beverages;
3. To establish a duty of persons having control over any premises, who knowingly host, permit or allow a gathering at the premises, to take reasonable steps to prevent the service to and consumption of alcoholic beverages by underage persons;
4. To address the inadequate supervision of parties, gatherings, or events on private property resulting in behavior that constitutes a threat to the peace, health, safety, and/or general welfare of the public;
5. To address the problem of responsible persons or hosts of parties, gatherings or events who fail to ensure that alcoholic beverages are not consumed by underage persons. Responsible persons or hosts of parties, gatherings, or events will be more likely to properly supervise such activities and prevent or stop the consumption of alcohol by underage persons if the responsible persons or hosts are held responsible for enabling or tolerating such conduct.

Section 8.86.020: Definitions: The following words, phrases and terms as used in this Chapter shall have the meaning as indicated below:

1. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirits of wine from whatever source or by whatever process produced.
2. "Alcoholic Beverage" means 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. Whenever the term alcoholic beverage is used in this Ordinance, it shall be deemed as to include any portion of such alcoholic beverage.

3. "Juvenile" means any person less than eighteen (18) years of age.
4. "Owner" means the owner of record of any private property, but excludes landlords, property managers and similar owner agents not living at, occupying or otherwise exercising control over all or a portion of the premises on which a party, gathering, or event occurs. Notwithstanding the foregoing, an owner who, whether on a temporary or permanent basis, leases or rents to or otherwise allows the use of such private property by a family member for any purpose, with or without compensation, shall be deemed to be an owner.
5. "Parent" means a person who is a natural parent, adoptive parent, foster parent, step-parent of another or who otherwise acts in loco parentis for another.
6. "Legal guardian" means a person who, by court order, is the guardian of another person.
7. "Party, gathering, or event" means a group of two (2) or more persons who have assembled or are assembling for a social occasion or social activity at a residence or on other private property, whether such residence or private property is owned, leased, rented or used, with or without compensation.
8. "Private property" or "Premises" means any real property, place or location, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, business or for a party or other social function, and whether owned, leased, rented or used with or without compensation, including but not limited to a home, residence, yard, apartment, condominium, hotel or motel room, other dwelling unit, hall or meeting room and any commercial, business or industrial real property.
9. "Responsible person or "host" means any of the following:
 - a. Any person that owns, rents, leases or otherwise has charge or control of a premises where a party, gathering, or event occurs.
 - b. Any person present at a party, gathering, or event who provides an alcoholic beverage to anyone under the age of twenty-one (21) years for consumption by such underage persons.

c. Any person present at a party, gathering, or event who receives money or other consideration for granting access to the party, gathering, or event.

d. Any person who hosts, organizes, supervises, officiates, conducts, controls, or willingly accepts responsibility for a party, gathering, or event.

10. "Underage person" means any person less than twenty-one (21) years of age.

Section 8.86.030: Prohibition on Allowing or Facilitating the Consumption of Alcohol by Underage Persons at Parties, Gatherings, or Events.

1. No responsible person or host shall cause, permit or allow a party, gathering, or event on private property if the responsible person or host either knows or reasonably should know that during such party, gathering or event (a) at least one underage person consumes one or more alcoholic beverages, or (b) at least one underage person is served an alcoholic beverage for consumption by such underage person.
2. No person shall serve, provide or otherwise facilitate the provision of any alcoholic beverage to any underage person for purpose of consumption by such underage person at a party, gathering, or event.
3. Any responsible person who hosts, permits or allows a party, gathering, or event on private property shall take all reasonable steps to prevent the consumption of alcoholic beverages by any underage person or the service to any underage person of an alcoholic beverage for consumption by such underage person. Reasonable steps include but are not limited to (a) controlling the access to alcoholic beverages at the party, gathering, or event; (b) controlling the quantity of alcoholic beverages at the party, gathering, or event; (c) verifying the ages of persons consuming alcohol or being served alcohol for consumption by inspecting drivers licenses or other government issued identification cards; (d) supervising the activities of underage persons at the party, gathering, or event; and (e) excluding all uninvited persons from the party, gathering, or event.

Section 8.86.040: Exemptions: Section 8.86.030 shall not apply to the following:

1. Conduct involving the consumption of alcoholic beverages exclusively between an underage person and his or her parent or legal guardian.

2. A person who provides an alcoholic beverage to an underage person and an underage person who consumes an alcoholic beverage as part of a legally protected religious activity.
3. Conduct protected under the United States and/or California Constitutions.
4. Any California Department of Alcoholic Beverage Control licensee at any premises regulated by the Department of Alcoholic Beverage Control or any other conduct regulated by federal and/or state laws or regulations, including but not limited to the California Alcoholic Beverage Control Act, in such a manner that the City is preempted or precluded from imposing additional regulations.
5. A responsible person or host who seeks assistance from law enforcement to (a) remove any person who refuses to abide by the host's performance of duties imposed by this Chapter or (b) terminate the party, gathering or event because the host has been unable to prevent underage persons from consuming alcoholic beverages, or being served alcoholic beverages for consumption, despite having taken reasonable steps to do so, as long as such request is made before any other person makes a complaint to the Police Department or other City personnel about the party, gathering, or event.

Section 8.86.050: Enforcement:

1. Any person violating Section 8.86.030 of this Chapter shall be guilty of a misdemeanor. In addition or as an alternative to such criminal remedy, a violation of this Chapter may be subject to enforcement through the administrative citation provisions of Chapter 22 of Title 1 of this Code, including, but not limited to the imposition of administrative fines. The violation of Section 8.86.030 constitutes a public nuisance.
2. The provisions of Chapter 16 of Title 8 of this Code, including but not limited to the police services fee, shall apply to a party, gathering or event that meets the requirements of Chapter 16 for purposes of recovery of a police services fee.
3. For any responsible person or host who is a juvenile, each parent and/or legal guardian of the juvenile shall be deemed to be a responsible person liable for any fines, penalties, and fees imposed upon such juvenile pursuant to this Chapter and Chapter 16 of Title 8 of this Code.

4. All remedies set forth in this Chapter are cumulative and the use of one or more remedies shall not bar the use of any other remedy for the purpose of enforcing this Chapter. Nothing in this Chapter shall limit the ability of the City to pursue any other means available pursuant to any other statute, ordinance or law, including but not limited to nuisance abatement laws, to remedy or prevent conduct prohibited by this Chapter."

Section 2. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly, or indirectly. Further, if the activity is deemed a project, this City Council finds that this Ordinance is exempt pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Section 3. If any section, subsection, subdivision, sentence, clause, phrase, word, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same, or the summary thereof, to be published and posted pursuant to the provisions of law and this Ordinance shall take effect thirty (30) days after adoption.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

ATTEST:

MAYOR

CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on June 11, 2013, with a vote as follows:

AYES: COUNCIL MEMBERS: (5) BEARD, JONES, NGUYEN, PHAN, BROADWATER
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (0) NONE