

CITY COUNCIL ORDINANCE NO. 11-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IRVINE AMENDING CHAPTER 5, TITLE 4, DIVISION 11 OF THE IRVINE MUNICIPAL CODE RELATING TO LOUD PARTIES AND LIABILITY FOR HOSTS CAUSING OR ALLOWING UNDERAGE PERSONS TO BE SERVED, TO POSSESS OR TO CONSUME ALCOHOL AT GATHERINGS

WHEREAS, on November 14, 1995, the City Council adopted Ordinance 95-21 to provide greater options for police officers for resolving loud parties and for the recovery of costs incurred for multiple police responses to loud party calls through the issuance of administrative citations; and

WHEREAS, the occurrence of loud or unruly gatherings or events on private property where alcoholic beverages are served to or consumed by underage persons is harmful to the underage persons and a threat to public health, quiet enjoyment of private property and to the general welfare of residents; and

WHEREAS, the Centers 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; and

WHEREAS, the City of Irvine has a history of promoting and fostering a culture of health and recreation for children and youth; and

WHEREAS, the City Council desires to amend the City's existing loud party regulations to hold liable responsible persons and hosts who provide alcohol beverages to underage persons at gatherings or events held on private property.

NOW, THEREFORE, the City Council of the City of Irvine DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 5, Division 11 of Title 4 of the Irvine Municipal Code is hereby amended and restated to read in its entirety as follows:

CHAPTER 5. LOUD PARTIES AND LIABILITY FOR HOSTS CAUSING OR ALLOWING UNDERAGE PERSONS TO BE SERVED, TO POSSESS, OR TO CONSUME ALCOHOL AT GATHERINGS

Sec. 4-11-500. Intent and Purpose

The intent of this chapter is to address inadequate supervision of parties and other types of events or gatherings of people on private property resulting in loud and/or unruly behavior that constitutes a threat to the peace, health, safety, and/or general

welfare of the public. This chapter is also intended to address the problem of hosts of such gatherings who fail to ensure that alcoholic beverages are not served to, possessed by, or consumed by underage persons. Underage persons who consume alcoholic beverages are at a greater risk for injuries, vehicle collisions, addiction, truancy and making poor or dangerous choices, and hosts of parties, gatherings or events will be more likely to properly supervise or stop the consumption of alcohol by minors if they are held responsible for enabling or tolerating such conduct.

Sec. 4-11-501. Definitions

The following words, terms and phrases when used in this chapter shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Alcoholic Beverage means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirit, 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.

Juvenile means any person less than eighteen (18) years of age.

Party, gathering or event means a group of persons who have assembled or are assembling at a residence or other private property, whether such residence or property is owned, leased, rented or used without compensation.

Parent or legal guardian means a person who is a natural parent, adoptive parent, foster parent or step-parent of another person, or a person who, under court order, is the guardian of another person, or a public or private agency with which a minor has been placed by the court.

Police services fee means the cost to the City of any special security assignment. Such fee shall be an itemized fee up to the full cost to the City of the special assignment and shall be based on, but not limited to, salaries of police officers while responding to or remaining at the party, gathering or event, the pro rata cost of equipment, the cost of repairing City equipment and property, and the cost of any medical treatment of injured police officers; provided, however, that in no event shall the fee exceed \$1,000.

Responsible person or host means any of the following:

1. Any person or entity that owns, rents, leases, or otherwise has control of a residence or other private property, including without limitation a hotel/ motel room or rented or leased area, where a party, gathering or event occurs.

2. Any person or entity present at a party, gathering, or event who provides an alcoholic beverage to anyone under the age of twenty-one (21) years.
3. Any person or entity present at a party, gathering or event where unruly or loud conduct occurs and that receives money or other consideration for granting access to the party, gathering or event, or hosts, organizes, supervises, officiates, conducts or controls, or willingly accepts responsibility for such a party, gathering or event.

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

Unruly or loud conduct includes the obstruction of streets by crowds or vehicles, public drunkenness, public urination, service to, possession of or consumption of alcoholic beverages by an underage person, assaults, batteries or other disturbances of the peace including, but not limited to, vandalism, littering or other conduct that constitutes a threat to public health, safety, or quiet enjoyment of residential property or public property.

Sec. 4-11-502. Initial police responses to parties, gatherings or events.

- A. When any police officer responds to any party, gathering or event due to loud or unruly conduct, the police officer may issue a written notice to each responsible person or host. That notice shall state that each subsequent response to that same location or address within a 30-day period, shall be deemed a special security assignment rendered to provide security and order on behalf of the party, gathering or event and that each responsible person or host may be liable for a police services fee, as defined in this chapter.
- B. If no responsible person or host is available on the premises when the police are present, or if the responsible person or host refuses to sign a receipt of notice, a copy of the notice shall be posted in a conspicuous place on the premises on each occasion that the police respond.

Sec. 4-11-503. Subsequent police responses to parties, gatherings or events; liability.

- A. If after a written notice is issued pursuant to section 4-11-502, a subsequent police response or responses is necessary to the same location or address within a 30-day period due to a party, gathering or event where unruly or loud conduct is taking place, such response or responses shall be deemed a special security assignment. Each police response to the same or different loud party, gathering or event shall be considered a separate response. Each responsible person or host previously warned shall be jointly and severally liable for a police services fee, as defined in this chapter due to the special security assignment.
- B. The subsequent response may also result in the arrest and/or citation of violators of the State Penal Code or other regulations, ordinances or laws.

Sec. 4-11-503.1. Prohibition on parties, gatherings and events where alcohol is served to, consumed by or in the possession of an underage person.

- A. It is unlawful and a public nuisance for a responsible person or host to cause or allow a party, gathering or event to occur at any residence or other private property at which any underage person is being served, is in possession of, or is consuming an alcoholic beverage, if the responsible person or host knows or reasonably should know that an underage person is being served, is in possession of, or is consuming an alcoholic beverage. A responsible person or host need not have been issued a prior warning in order to be subject to the penalties for violation of this section. A responsible person or host shall be rebuttably presumed to have knowledge that an underage person was being served, was in possession of, or was consuming an alcoholic beverage at a party, gathering or event if the responsible person or host did not take all reasonable steps to prevent such activity from occurring. Reasonable steps include without limitation: controlling the access to and serving of alcoholic beverages to underage persons, and monitoring the responsible, safe and lawful conduct of underage persons.

Sec. 4-11-503.2. Exempted activities.

This chapter shall not apply to, nor be construed to apply to, any of the following:

- A. A responsible person or host who takes all reasonable steps, including, but not limited to requesting assistance of law enforcement, to exclude all uninvited persons at a gathering who provide, serve or facilitate the possession or consumption of alcohol by an underage person.
- B. Conduct protected under the United States and/or California Constitution, including but not limited to religious activities protected by Article I, Section 4 of the California Constitution.
- C. Conduct regulated by state and/or federal law or regulation, 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 regulation.

Sec. 4-11-503.3. Violations.

- A. For any responsible person or host who is a juvenile, each parent and/or legal guardian of the juvenile shall be considered a responsible person(s) liable for any fines, penalties and fees imposed pursuant to this chapter.
- B. Each separate violation of section 4-11-503.1 shall be subject to the issuance of an administrative Notice of Violation to each responsible person and host. Each separate violation shall, in addition to any police services fee that may be assessed pursuant to this chapter, be subject to the following administrative fines:

1. For a first violation, an administrative fine shall not exceed seven hundred fifty dollars (\$750).
2. For a second violation within a 12-month period, an administrative fine shall not exceed one thousand five hundred dollars (\$1,500).
3. For a third violation, or any subsequent violation thereafter, within a 12-month period, an administrative fine shall not exceed three thousand dollars (\$3,000).

Sec. 4-11-504. Cost; collection.

- A. The Director of Public Safety shall provide the City Treasurer in writing with all information necessary concerning any police services fee and/or administrative fines imposed pursuant to this Chapter. The City Treasurer may thereafter cause appropriate billing to be made to each responsible person or host. All fines and police services fees imposed pursuant to this chapter shall be due and payable to the City within the time period indicated by the City. However, if a timely appeal is requested pursuant to section 4-11-505, the fines and fees shall be due and payable within thirty (30) calendar days of a final decision on the appeal. The payment of fines and/or fees shall not constitute a waiver of a person's right to an administrative appeal.
- B. The amount of any fines and fees imposed pursuant to this chapter shall be deemed a debt owed to the City. At its discretion, the City may pursue any and all legal and equitable remedies to collect unpaid fines and/or fees. Pursuit of one remedy does not preclude the pursuit of any other remedy. It is intended that responsible persons causing, maintaining and/or permitting the violation, and not the taxpayers, bear the financial burden of the City's enforcement efforts. Any person who fails to pay a fine or fee imposed under this Chapter shall be liable in any proceeding brought by the City for costs incurred in securing payment of the unpaid amount, including without limitation, administrative costs and attorneys' fees. Liability for such costs shall be in addition to any penalties, interest and/or late charges imposed upon the unpaid fines and/or fees.

Sec. 4-11-505. Administrative appeal.

- A. Availability of Hearing. The billing invoice issued to a responsible person or host by the City pursuant to section 4-11-504 shall include a notice that an administrative hearing to challenge the invoiced amount or liability for any amount shall be available if a written request for such a hearing is received by the Director of Public Safety within fifteen (15) calendar days of the date the invoice is mailed. Failure of a person to request an administrative hearing within such time period, or failure of a person to appear at a scheduled hearing, shall constitute a waiver of the right to such a hearing.
- B. Hearing Procedures. If a written request for an administrative hearing is timely received by the Director of Public Safety, the City shall schedule a date for the

hearing, and shall provide the person appealing with notice of the hearing date, time and location at least twenty (20) days prior to the hearing date. The Director of Public Safety, or his or her designee ("hearing officer"), shall conduct the hearing in accordance with section 4-13-308 of this Code. Challenges to the hearing officer's impartiality under Code of Civil Procedure section 170.1 shall be handled pursuant to section 4-13-308(D). The decision of the hearing officer shall be final.

- C. Judicial Review. If a decision is rendered in favor of the City, the responsible person may seek judicial review of the administrative decision by following the procedures set forth in section 4-13-309.

SECTION 2. If any portion of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

SECTION 3. The City Clerk shall certify to the passage of this Ordinance and this Ordinance shall be published as required by law and shall take effect as provided by law.

PASSED AND ADOPTED by the City Council of the City of Irvine at a regular meeting held on the 22nd day of November, 2011.



MAYOR OF THE CITY OF IRVINE

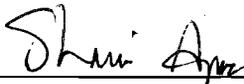
ATTEST:


CITY CLERK OF THE CITY OF IRVINE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF IRVINE)

I, Sharie Apodaca, City Clerk of the City of Irvine, HEREBY DO CERTIFY that the foregoing Ordinance was introduced for first reading on November 8, 2011, and duly adopted at a regular meeting of the City Council of the City of Irvine held on the 22nd day of November, 2011, by the following vote:

AYES: 5 COUNCILMEMBERS: Agran, Choi, Krom, Lalloway and Kang
NOES: 0 COUNCILMEMBERS: None
ABSENT: 0 COUNCILMEMBERS: None



CITY CLERK OF THE CITY OF IRVINE

