

ORDINANCE NO. 4120

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF POMONA AMENDING CHAPTER 34 ("OFFENSES AND MISCELLANEOUS PROVISIONS") OF THE POMONA CITY CODE TO FURTHER REGULATE PUBLIC POSSESSION OF ALCOHOLIC BEVERAGES

WHEREAS, Pomona Police Officers are receiving complaints that alcoholic beverages are frequently being consumed in public places, in particular, in public parking lots;

WHEREAS, the current City Code prohibits the drinking of alcohol beverages in certain public places, but does not clearly prohibit open containers of alcoholic beverages in other areas throughout the City;

WHEREAS, although the California Constitution and state law generally regulate the *possession* of alcoholic beverages, pursuant to Section 25620 of the California Business and Professions Code, anyone who *possesses* an open container containing an alcoholic beverage may be cited for an infraction, so long as the city prohibits the possession and consumption of alcoholic beverages in public areas;

WHEREAS, in addition, local governments can regulate the public *consumption* of alcoholic beverages;

WHEREAS, to provide Pomona Police Officers the ability to more effectively address the public possession of alcohol throughout the City, the City Council desires to amend the City Code to prohibit the possession of alcoholic beverages to the fullest extent possible under the California Constitution and state law.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Pomona as follows:

SECTION 1. Chapter 34, Article IV "Offenses Involving Public Peace and Order," Division 1 of the Pomona City Code is hereby amended to read as follows:

DIVISION 1. ALCHOLIC BEVERAGES IN PUBLIC PLACES

Sec. 34-151. Definitions

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this Section:

"*Alcoholic beverage*" means and 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.

“**ABC**” means the Department of Alcoholic Beverage Control for the State of California.

“*Open container*” means any bottle, can, jug, box or other receptacle which is open or has been opened and contains any alcoholic beverage.

“*City*” means the City of Pomona.

“*City buildings*” means structures or buildings owned, leased or controlled by the City of Pomona.

“*Public property*” means any property owned or controlled by the City of Pomona, including but not limited to, a street, bike path, alley, parking lot, or public park.

Sec. 34-152. Consumption of alcoholic beverages.

Any person who drinks any alcoholic beverage in any public place is guilty of a misdemeanor, unless expressly permitted pursuant to the terms of a license issued by the ABC or unless otherwise permitted by this Code.

Section 34-153. Possession of opened alcoholic beverage containers.

- (a) It is unlawful for any person to possess an open container of any alcoholic beverage in a City building or on public property in the City, unless expressly permitted pursuant to the terms of a license issued by the ABC or unless otherwise permitted by this Code. Any person convicted of a violation of this Section shall be guilty of an infraction.
- (b) No person who has in his possession an open container of any alcoholic beverage shall enter, be, or remain on the posted premises of, including the posted parking lot immediately adjacent to, any retail package off-sale alcoholic beverage licensee licensed pursuant to Business and Professions Code div. 9 (Business and Professions Code § 23000 et seq.) or on any public sidewalk immediately adjacent to the licensed and posted premises. Any person violating this section shall be guilty of an infraction.
 - (i) As used in subsection (b) of this section, the term "posted premises" means those premises which are subject to licensure under any retail package off-sale alcoholic beverage license, the parking lot immediately adjacent to the licensed premises and any public sidewalk immediately adjacent to the licensed premises on which clearly visible notices indicate to the patrons of the licensee and parking lot and to persons on the public sidewalk that subsection (b) of this section and Penal Code § 647e(a) are applicable.

- (ii) Each retail package off-sale alcoholic beverage licensee in the city shall post notice on its premises substantially providing as follows:

"NOTICE: POSSESSION OF OPENED ALCOHOLIC BEVERAGE CONTAINERS ON THESE PREMISES IS PROHIBITED BY LAW. CAL. PENAL CODE § 647E. POMONA CITY CODE SECTION 34-153."

The number, size, design and location of such notices shall be subject to the approval of the chief of police. If a licensee fails to post notice as directed by the chief of police after 30 days' written notice to do so, the premises shall be deemed to be a public nuisance.

- (iii) Except as provided in subsection (b)(iv) of this section, the owner or possessor of any property open to the public, other than a retail package off-sale alcoholic beverage establishment, may cause the property to be posted with the notice described in subsection (b)(ii) of this section. Upon such posting, subsection (b) of this section shall apply to the property, notwithstanding the fact that the property is not occupied by a retail package off-sale alcoholic beverage licensee.

- (iv) This section shall not apply to a private residential parking lot which is immediately adjacent to the posted premises.

Sec. 34-154. Preemption by state law.

This Division shall not be construed or interpreted as applicable to any act or acts regulated by state law, but shall be limited to permitted subject of local regulation not preempted by state law.

SECTION 2. If any section, subsection, sentence, clause or phrase in this division is for any reason held invalid, the validity of the remainder of the division will not be affected. The City Council hereby declares it would have passed this division and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

SECTION 3. The City Clerk shall attest to the passage and adoption of this ordinance, and shall cause same to be posted as required by law, and this ordinance shall take effect thirty (30) days after its final adoption.

PASSED, APPROVED and ADOPTED this 18th day of May, 2009.

ATTEST:

CITY OF POMONA:

Marie Michel Macias, City Clerk

Elliott Rothman, Mayor

APPROVED AS TO FORM:

Arnold M. Alvarez-Glasman, City Attorney

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF POMONA

I, MARIE MICHEL MACIAS, CITY CLERK of the City of Pomona do hereby certify that the foregoing ordinance was introduced for first reading at a regular meeting of the City Council of the City of Pomona held on April 20, 2009, and adopted at a second reading at a regular meeting of the City Council of the City of Pomona held on the 18th day of May, 2009 by the following vote:

AYES: COUNCILMEMBERS: Soto, Rodriguez, Carrizosa, Lantz, Saunders, Rothman
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: Atchley
ABSTAIN: COUNCILMEMBERS: None

Marie Michel Macias, City Clerk