

ORDINANCE NO. 3799-A

AN ORDINANCE OF THE CITY OF MUSKOGEE, OKLAHOMA ADDING DIVISION 4, SECTION 54-147 OF THE MUSKOGEE CITY CODE; ESTABLISHING AN OFFENSE AGAINST THE PUBLIC FOR PERMITTING OR ALLOWING GATHERINGS WHERE MINORS ARE CONSUMING ALCOHOLIC BEVERAGES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; AND FURTHER DECLARING AN EMERGENCY.

WHEREAS, the City of Muskogee finds that underage consumption of alcohol by minors who attend social gatherings is an expanding problem affecting many cities and towns in the State of Oklahoma, including the City of Muskogee,

WHEREAS, the City of Muskogee finds that resources of the City are being utilized to combat the problem of underage consumption of alcohol with no recourse against adult persons who allow or permit this type of underage consumption, and

WHEREAS, it is the intent of the City of Muskogee to protect and promote the public health, safety and welfare by establishing an offense against the public for persons who permit or allow gatherings where minors are consuming alcoholic beverages, and provide for a civil and criminal penalty for the same,

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA:

Section 1: That Division 4, Section 54-147, is hereby added to the Muskogee City Code to read as follows:

DIVISION 4: SOCIAL HOST

Sec. 54-147. Permitting or allowing gatherings where minors are consuming beverages.

The following words and phrases used in this article, shall for the purposes of this article, have the meanings respectively ascribed to them in this section, except where the context otherwise requires.

(A) Definitions. For purposes of this section, the following definitions shall apply:

"Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

"Alcoholic beverages" means:

(1) Except as otherwise provided, an alcoholic beverage is any liquor containing hydrated oxide of ethyl, ethyl alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(2) Excepted from this definition is any wood alcohol or alcohol which has been denatured or produced as denatured in accordance with Acts of Congress and any regulations promulgated thereunder.

"Gathering" is a party, gathering, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

"Intoxicating beverage" An intoxicating beverage is any alcoholic beverage capable of being consumed by human beings which contains more than three and two-tenths (3.2) percent alcohol by weight.

"Harmful substance" means a substance that:

(1) Contains ketones, aldehydes, organic acetones, ether, chlorinated hydrocarbons (e.g., gasoline, glue, fingernail polish, etc.) or some other solvent-releasing toxic vapors; or

(2) Causes or can cause conditions of intoxication, inebriation, excitement, elation, stupefaction, paralysis, irrationality, dulling of the brain or nervous system or otherwise changes, distorts or disturbs the eyesight, thinking process, judgment, balance or coordination of an individual.

"Legal guardian"

(1) A person who, by court order, is the guardian of the person of a minor; or

(2) A public or private agency with whom a minor has been placed by the court.

"Low point beer" is any alcoholic beverage capable of being consumed by human beings which contains more than one-half (1/2) of one (1) percent alcohol by volume and not more than three and two-tenths (3.2) percent alcohol by weight.

"Minor" means any person under twenty-one years of age.

"Parent" means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

"Premises" means any residence or other private property or place, including any commercial or business property.

"Response costs" are the costs associated with responses by law enforcement, fire, and other emergency response providers to a gathering, including but not limited to:

(1) Salaries and benefits of law enforcement, code enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a gathering, and the administrating costs attributable to such response(s);

(2) The cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a gathering;

(3) The cost of repairing any City equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of a gathering; and,

(4) Any other allowable costs related to the enforcement of this Section.

(B) Consumption of alcohol by minor in a public place, place open to public, or place not open to public.

Except as permitted by State law, it is unlawful for any minor to:

(1) Consume at any public place or any place open to the public alcoholic beverage; or

(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 is being supervised by his or her parent or legal guardian.

(C) Hosting, permitting, or allowing a party, gathering, or event where minors consuming alcoholic beverages or harmful substances prohibited.

(1) It is the duty of any person having control of any premises, who knowingly hosts, permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages or harmful substances by any minor at the gathering. Reasonable steps are controlling access to alcoholic beverages at the gathering; 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 while at the gathering; and supervising the activities of minors at the gathering.

(2) It is unlawful for any person having control of any premises to knowingly host, permit, or allow a gathering to take place at said premises where at least one (1) minor consumes an alcoholic beverage or harmful substance, whenever the person having control of the premises either knows a minor has consumed an alcoholic beverage or reasonably should have known that a minor consumed an alcoholic beverage 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.

(D) 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.

(E) Nothing in this section should be interpreted to prohibit any family activity held in the confines of the family home from providing the use of alcohol to immediate family members within the supervision of parents and guardians. However, if a minor leaves such a family gathering intoxicated and is found in public then said providers of alcohol will be held responsible in the same manner as a non-family gathering.

(F) Nothing in this section should be interpreted to prohibit any religious practice which includes the use of alcohol. However, if a minor leaves such a religious gathering intoxicated and is found to be in public then said providers of alcohol will be held responsible in the same manner as a non-religious gathering.

(G) This section shall not apply to any premises licensed by the State of Oklahoma to dispense alcoholic beverages.

(H) *Reservation of legal options.* Violations of this section may be prosecuted by the City of Muskogee criminally, civilly, and/or administratively as provided by the Municipal Code. The City may seek administrative fees and response costs associated with enforcement of this section through all remedies or procedures provided by statute, ordinance, or law. This section shall not limit the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this section, nor shall they limit the City's ability to initiate and prosecute any criminal offense arising out of the same circumstances necessitating the application of this section.

(I) *Local authority.* This section shall not apply where prohibited or preempted by State or Federal law.

Section 2: REPEALER. All ordinances or parts of ordinances in direct conflict herewith are hereby repealed to the extent of the conflict only.

Section 3: SEVERABILITY. Should any section, subsection, sentence, provision, clause, or phrase hereof be held invalid, void or unconstitutional for any reason, such holding shall not render invalid, void or unconstitutional any other section, subsection, sentence, provision, clause or phrase of this ordinance, and the same are deemed severable for this purpose.

Section 4. EMERGENCY. This ordinance being designated to protect the public health, safety and welfare of the inhabitants of the City of Muskogee, Oklahoma, and its passage being immediately necessary, an emergency is hereby declared to exist and by reason whereof


this ordinance shall take effect immediately upon its passage, approval and publication as provided by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE, OKLAHOMA, THIS THE 27TH DAY OF OCTOBER, 2008.



JOHN TYLER HAMMONS, MAYOR

ATTEST:



PAMELA S. BUSH, CITY CLERK
(SEAL)



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RT/TM