

AN ORDINANCE

AMENDING CHAPTER 21 OF THE CITY CODE OF SAN ANTONIO, TEXAS, TO CREATE A NEW ARTICLE XI ENTITLED “SOCIAL HOST UNDERAGE DRINKING ACCOUNTABILITY” RELATED TO UNDERAGE CONSUMPTION OF ALCOHOL, AND CREATING A CIVIL OFFENSE AND PENALTIES FOR VIOLATIONS

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WHEREAS, the City of San Antonio, Texas, pursuant to the police powers delegated to it by the Texas Constitution and the Texas Local Government Code, has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, the occurrence of gatherings involving underage consumption of alcohol on private property is a threat to the public health, safety, or quiet enjoyment of residential property and the general welfare; and

WHEREAS, Chapter 106 of the Texas Alcoholic Beverage Code makes it unlawful for a person under the age of 21 years to purchase or attempt to purchase, or consume alcoholic beverages, and makes it unlawful for any person to sell or provide any alcoholic beverage to any person under the age of 21 years; and

WHEREAS, alcohol policy research regarding underage drinking shows that when communities reduce youth access to alcohol, communities experience reductions in youth alcohol use and related problems; and

WHEREAS, reducing youth access to alcohol from social sources has been recognized as a best practice by the Institute of Medicine; and

WHEREAS, communities that have adopted such ordinances have seen reductions in the size of gatherings, reductions in youth perception of ease of access to alcohol, and reductions in repeat calls for service for such gatherings; and

WHEREAS, the ability of law enforcement to abate gatherings where alcohol is consumed by persons under the age of 21 years on private property will help to decrease abuse of alcohol by persons under the age of 21 years, physical altercations and injuries, sexual assaults, truancy, driving under the influence of alcohol, adolescent crime, motor vehicle crashes, neighborhood vandalism and excessive noise disturbances thereby improving public safety and overall quality of life of city residents; and

WHEREAS, persons held responsible for abetting or allowing gatherings that feature underage drinking will be more likely to properly supervise or to stop such conduct at gatherings held on property in their possession or under their control; and

WHEREAS, problems associated with such gatherings at which alcoholic beverages are served to, consumed by or in the possession of underage persons are more easily deterred or prevented if law enforcement has the additional legal authority to issue a civil citation for a civil fine and/or a civil citation for the cost of public safety response; and

WHEREAS, the intent of this Article is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish, and therefore, provide that persons who actively or passively aid, abet, or allow gatherings involving underage drinking shall be held liable for the nuisances created by such gatherings by the imposition of civil fines for such violations and/or the costs associated with responding to such gatherings; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Code of San Antonio, Texas, Chapter 21, is hereby amended by adding a new Article XI, entitled "Social Host Underage Drinking Accountability," which creates a civil offense and penalties for violations, to read as follows:

ARTICLE XI. SOCIAL HOST UNDERAGE DRINKING ACCOUNTABILITY

Sec. 21-300. Title.

This Article shall be known as "Social Host Underage Drinking Accountability."

Sec. 21-301. Legislative purpose.

The purposes of this Article are to:

- A. Protect the public health, safety and general welfare;
- B. Promote the reduction of underage drinking by imposing a civil fine on persons or entities responsible for gatherings where alcohol is consumed by, served to or in the possession of underage persons;
- C. Facilitate the enforcement of laws prohibiting the service to, consumption of or possession of alcoholic beverages by underage persons; and
- D. To offset the City's costs associated with providing fire, police, and other emergency services to gatherings involving underage drinking, by imposing a civil fee upon the persons or entity responsible for the gathering involving underage drinking to occur on their premises, at their residences, or at rented facilities.

Sec. 21-302. Legislative findings.

The recitals set forth above are incorporated herein as legislative findings by the City Council.

Sec. 21-303. Definitions.

For the purpose of this Article, the following definitions shall apply:

"Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted, including but not limited to beer, wine, ale, liquor, distilled spirits and wine coolers.

"Gathering involving underage drinking" means a party or gathering of two or more persons at which one or more underage person possesses or consumes an alcoholic beverage.

"Other private property" refers to hotel or motel room; an assembly hall or meeting room; a common room of a dwelling unit used for a party (e.g., recreation room of an apartment building); a site in a privately owned campground; privately owned vacant lot; privately owned agricultural land; or privately owned rural land whether occupied as a dwelling, part or other social function, and whether owned, leased, rented or used without compensation.

"Public safety services" and/or "Response costs" means the costs associated with responses by law enforcement, fire and other emergency response providers to gatherings involving underage drinking, including but not limited to:

- A. The portion of the cost of salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the gathering(s) involving underage drinking, and the administrative costs attributable to such response(s);
- B. The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of a gathering involving underage drinking; and
- C. The cost of the use of any equipment or property, and the cost of repairing any equipment or property damaged, in responding to, remaining at or leaving the scene of a gathering involving underage drinking.

"Residence" includes a dwelling unit such as a home, condominium or apartment; structures on the residence other than the dwelling such as a garage, studio, tent, boat dock, swimming pool, barn or boat house; land on the residence whether improved or unimproved such as a yard, patio, open fields, piers or lake shores; water bodies on the residence such as a pond, lake, river or stream; a motor vehicle, camper or trailer located on the residence or a boat, watercraft, or other marine vessel located on the residence whether occupied on a temporary or permanent basis,

whether occupied as a dwelling or for a party or gathering, and whether owned, leased, rented, or used with or without compensation.

"Underage person" means any person less than 21 years of age.

Sec. 21-304. Prohibition of gatherings involving underage drinking.

No person shall suffer, permit or host a gathering involving underage drinking at a location under his or her control, including but not limited to the person's residence, other private property, place, premises, or public place.

Sec. 21-305. Protected activities.

This ordinance shall not apply to activities duly permitted by the State of Texas or the City of San Antonio, or to activities protected by the First or Fourteenth Amendments to the United States Constitution.

Sec. 21-306. Violation(s); Civil penalties.

It shall be a civil violation for a person to violate Sec. 21-304 of this Article. Law enforcement personnel, at the officer's discretion, may immediately issue a Notice of Violation for this civil violation upon evidence of the violation. There is no requirement of a first warning in order for law enforcement to issue this civil citation.

A. Civil penalty: A first violation of this section shall result in a Notice of Violation with a civil penalty not to exceed \$300. A second or subsequent violation shall result in a Notice of Violation with a civil penalty not to exceed \$500.

B. Peace officers employed by the City of San Antonio, and the San Antonio Police Department, are hereby authorized to issue Notices of Violations for violations of the Article, by issuing a written Notice of Violation to any and all responsible persons identified by law enforcement within 30 days of the violation. The Notice of Violation may be delivered in person, or by certified mail.

C. The Notice of Violation shall include:

1. The name(s) of the person(s) being held liable for the payment of such costs;
2. The location where the gathering involving underage drinking occurred;
3. A description of the violation;
4. The date and time of the violation;
5. The amount of the civil penalty for which the person is liable;

6. Notice and warning that a second or subsequent violation of this Article on the same date or within six months of the date of the notice shall result in the person's liability for the cost of providing public safety services (i.e., fire, ambulance, law enforcement, and other emergency providers), and that the cost recovery for public safety responses shall be separate and distinct from a civil penalty for a violation;

7. Notice of the right and method to request an administrative hearing to challenge the validity of the Notice of Violation, and the deadline for requesting that hearing; and

8. Notice that failure to contest or pay the civil penalty in a timely manner is an admission of liability and a waiver of the right to appeal the imposition of the civil penalty.

D. The civil penalty prescribed in this section is in addition to any civil cost recovery fee for public safety responses that may be assessed pursuant to Sec. 21- 307.

Sec. 21-307. Imposition of civil cost recovery fee for public safety responses.

The requirement of a first warning in Sec. 21-306(C)(4) does not limit the ability of public safety personnel to issue a civil citation for the imposition of civil penalties for cost recovery on the same day that the warning is given if the warning does not end the gathering involving underage drinking. The cost recovery for public safety responses shall be separate and distinct from a civil penalty for a civil violation described in Sec. 21-306.

A. The amount of cost recovery under this subsection shall be the response costs.

B. The San Antonio Police Department shall develop a schedule of costs for use in determining response costs subject to this Article.

C If there is more than one responsible person for the gathering then each responsible person shall be jointly and severally liable for the civil penalty and/or for the costs incurred for public safety services pursuant to this Article.

D. Civil cost recovery fee(s) shall not be imposed for the medical response costs in those situations where those present at the gathering call for emergency services for an actual emergency at the premises.

Sec. 21-308. Hearings on the imposition of civil fine and/or imposition of civil cost recovery fee for public safety response; Appeals.

A. The City Manager, or the City Manager's designee, shall appoint an independent Hearings Officer ("Hearings Officer"), to preside over appeals under this Article.

B. Any person subject to a civil penalty pursuant to Sec. 21-306 or subject to a civil cost recovery fee for public safety responses pursuant to Sec. 21-307 shall have the right to request an administrative hearing within 45 days of the issuance of a Notice of Violation. To request such a hearing, the person requesting the hearing shall notify the San Antonio City Clerk's Office, in writing, within 45 days of the issuance of the citation.

C. The Hearings Officer is delegated the power and duty to hear any appeal hearing under Sec. 21-308. The Hearings Officer shall conduct a hearing on the matter within 90 days of the request for the hearing unless one of the parties requests a continuance for good cause. The Hearings Officer shall render a decision within 30 days of the conclusion of the hearing. The Hearings Officer shall have the sole authority for sustaining or overturning a Notice of Violation or imposition of response costs issued under this Article. The decision of the Hearings Officer shall be final.

D. An appeal of a Notice of Violation under Sec. 21-307, or imposition of costs under Sec. 31-308, must include the following procedures:

1. Every person who appeals shall have the right to appear in person or through an attorney;
2. All persons who testify at the hearing shall testify under oath, and the person who appealed shall have the right to produce evidence, and subpoena and call witnesses; and
3. The burden of proof is on the City to prove by a preponderance of the evidence that the civil violation occurred.

Sec. 21-309. Billing and civil penalty and civil cost recovery fee for public safety responses; Debt to City; Enforcement

A. The amount of a civil penalty and/or civil cost recovery fee for public safety responses shall be deemed a debt owed to the City by the person responsible for the gathering. Any person owing such penalty and/or fees shall be liable in an action brought in Bexar County for recovery of such penalty and/or fees.

B. The Police Chief shall mail notice via certified mail within 20 days of the public safety response for which the person is liable giving rise to such costs. The Police Chief shall calculate and compile an itemized list of applicable response costs. The notice shall contain the following information:

1. The name(s) of the person(s) being held liable for the payment of such costs;
2. The address of the residence or other private property where the gathering involving underage drinking occurred;
3. The date and time of the response;
4. The law enforcement, fire and/or emergency service responder who responded;
5. The date and time of any previous warning given pursuant to Article 91-307;
6. An itemized list of the response costs for which the person(s) is liable;
7. Information regarding the date payment is due;
8. The right and method to request an administrative hearing to challenge the imposition of response costs and/or civil penalties; and
9. Notice that failure to contest or pay the civil penalty or costs in a timely manner is an admission of liability and a waiver of the right to appeal the imposition of the civil penalty and costs.

C. The responsible person must remit payment of the noticed costs and/ or civil penalties to the City within 45 days of the notice thereof. The payment of any such costs shall be stayed upon a timely request for an administrative hearing made pursuant to Sec. 21-308.

D. The City Manager, and the City Manager's designee, shall have the authority to file any action or proceeding to recover such civil penalties, public safety response costs, expenses and/ or civil penalties, and take any other actions at law which he may deem necessary to recover same.

Sec. 21-310. Remedies Cumulative; Actions; Relationship to Other laws

The remedies provided under this Article are cumulative, and shall not restrict the City to any other remedy to which it is entitled under law or equity. Nothing in this Article shall be deemed to preclude the imposition of any criminal penalty under state law. Nor shall anything in this Article be deemed to conflict with any penalty or provision under state law, or prohibit any conduct authorized by the state of federal constitution.

SECTION 2. Should any portion of this ordinance for any reason be held illegal, inoperative, invalid, unconstitutional or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted or ordained without the portion held to be illegal, inoperative, invalid, unconstitutional or ineffective.

SECTION 3. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein, to correct typographical errors and to format and number paragraphs to conform to the existing Code.

SECTION 4. The City Clerk of the City of San Antonio is hereby directed to publish notice of this Ordinance as required by Section 17 of the Charter of the City of San Antonio and the laws of the State of Texas.

SECTION 5. This ordinance shall take effect March 1, 2017.

PASSED and APPROVED this 15th day of December, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

APPROVED AS TO FORM:

Leticia M. Vacek, City Clerk

City Attorney