

**ORDINANCE NO. 08- \_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MISSION VIEJO, CALIFORNIA, ADDING CHAPTER 11.22 OF TITLE 11 OF THE MISSION VIEJO MUNICIPAL CODE PROVIDING FOR SOCIAL HOST UNDERAGE DRINKING AND CONSUMPTION ACCOUNTABILITY.**

**THE CITY COUNCIL OF THE CITY OF MISSION VIEJO DOES ORDAIN AS FOLLOWS:**

**Section 1.** Findings.

A. The City of Mission Viejo, as a general law city, is authorized by California Constitution Article XI, Section VII to make and enforce within its limits all local, police, sanitary, and other ordinances and regulations. The City Council, as a policy, always seeks to ensure public safety is given the highest priority.

B. The occurrence of parties, gatherings, or events on private property where alcoholic beverages and/or controlled substances are served to, consumed by or in the possession of underage persons is harmful to the underage persons themselves and is a public nuisance;

C. The City of Mission Viejo has made numerous and substantial efforts to enforce underage drinking and consumption laws. Despite these efforts, use of alcohol and controlled substances by youth remains a serious problem in the City, contributing significantly to the incidence of adolescent crime, addiction, sexual assault, truancy, driving under the influence of alcohol and/or controlled substances, and motor vehicle crashes involving alcohol and/or controlled substances and causing injury and/or death;

D. Underage persons often obtain alcoholic beverages and/or controlled substances at gatherings held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the service to, possession by, and/or consumption of alcohol and/or controlled substances by underage persons. Persons responsible for the occurrence of parties, gatherings, or events on private property over which they have possession or control have failed to ensure that alcoholic beverages and/or controlled substances are not served to, consumed by or possessed by underage persons at these gatherings;

E. Control of parties, gatherings, or events on private property where alcoholic beverages and/or controlled substances are served to, consumed by or in the possession of underage persons is necessary when such activity is determined to be a public nuisance;

F. Persons held responsible for abetting or allowing parties, gatherings, or events where alcohol and/or controlled substances is served to, consumed by or in the possession of underage persons will be more likely to properly supervise or to stop such conduct at parties, gatherings or events held on property in their possession or under their control;

G. In the past and present, law enforcement, fire and other emergency response services personnel have responded and are required to respond, sometimes on multiple occasions, to parties, gatherings, or events on private property at which alcoholic beverages and/or controlled substances are served to, consumed by or in the possession of underage persons, and responses to such gatherings result in a disproportionate expenditure of public safety resources of the City, which are underwritten by general municipal taxes paid to the City by its taxpayers and residents, and also result in a delay of responses to regular and emergency calls to the rest of the City;

H. Problems associated with parties, gatherings, or events at which alcoholic beverages and/or controlled substances are served to, consumed by or in the possession of underage persons are difficult to prevent or deter unless the City has the legal authority to penalize said action;

I. The intent of this article is to protect the public health, safety, quiet enjoyment of residential property, and general welfare.

J. Section 25658 of the State of California Business and Professions Code makes it unlawful for a person under the age of twenty-one (21) years to purchase or attempt to purchase, or consume alcoholic beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under the age of twenty-one (21) years;

K. According to local, state and federal surveys, alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels. A child who begins alcohol use prior to age fifteen (15) is four times as likely to experience alcohol dependence than one who refrains from alcohol use until age twenty (20) or older;

L. This City Council of the City of Mission Viejo therefore determines that this chapter is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth and other residents of the City of Mission Viejo.

**Section 2.** Ordinance: Amendment to Municipal Code.

Chapter 11.22 of Title 11 of the Mission Viejo Municipal Code is hereby added as follows:

“CHAPTER 11.22 SOCIAL HOST UNDERAGE DRINKING AND CONSUMPTION ACCOUNTABILITY.

- 11.22.010. Definitions
- 11.22.020. Prohibition of Parties, Gatherings, or Events Where Alcohol and/or Controlled Substances Is Served to, Consumed by or in the Possession of Underage Persons
- 11.22.030. Enforcement
- 11.22.040. Conference with City Manager
- 11.22.050. Warning
- 11.22.060. Cost Recovery Fee for Public Safety Services
- 11.22.070. Appeal

“11.22.010. Definitions

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

‘*Alcoholic beverage*’ includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, 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.

‘*Controlled Substances*’ shall include all narcotics or drugs, the possession of which is illegal under the laws of the State of California as defined under the Penal Code, Health and Safety Code and related statutes.

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

‘*Minor*’ means any person less than twenty-one (21) years of age.

‘*Parties, gatherings or events*’ means a group of five (5) or more persons who have assembled or are assembling for a social occasion or social activity at a residence or on other private property or rented public property. Said parties, gatherings or events where alcoholic beverages and/or controlled substances are consumed by, provided to or possessed by underage persons shall constitute a public nuisance.

*‘Person responsible for the event’ or ‘responsible person’* means and includes, but is not limited to:

- (1) the person who owns, rents, leases or otherwise has control of the premises where the party, gathering, or event occurs; and/or
- (2) the person in charge of the premises; and/or
- (3) the person who organized the event; and/or
- (4) the person who supervised the event.

*‘Cost Recovery Fee for Public Safety Services’* means the costs associated with responses by law enforcement, fire and other emergency response providers to parties, gatherings, or events, including but not limited to:

- (1) 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 parties, gatherings, or events, and the administrative costs attributable to such response(s);
- (2) 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 party, gathering, or event; and
- (3) the cost of the use of any City equipment or property, and the cost of repairing any City equipment or property damaged, in responding to, remaining at or leaving the scene of a party, gathering, or event.

*‘Underage person’* means any person less than twenty-one (21) years of age and shall have the same meaning as “minor,” defined in subsection (e) above.

11.22.020. Prohibition of Parties, Gatherings, or Events Where Alcohol and/or Controlled Substances Is Served to, Consumed by or in the Possession of Underage Persons

No person shall knowingly suffer, permit, or host a party, gathering or event at his or her place of residence or other private or public property, place or premises under his or her control where two or more persons under the age of 21 are present, where alcoholic beverages and/or

controlled substances are in the possession of, being consumed by, or served to any underage person. This prohibition shall not apply to parties, gatherings or events where religious services and/or activities protected by Article 1, Section 4, of the California Constitution, are exercised, nor shall the prohibition apply to conduct involving the use of alcoholic beverages occurring exclusively between a minor and his or her parent and/or legal guardian.

#### 11.22.030. Enforcement

(a) Except as otherwise provided in subsection (b) of the section, any person violating section 11.22.020 is guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) and/or imprisonment of not more than six (6) months.

(b) Notwithstanding any provision to the contrary, the City Attorney shall have the discretion to reduce to an infraction any act made unlawful pursuant to subsection (a) to this section, substitute administrative citation remedies pursuant to Chapter 1.03, or impose other penalties, as specified in (c) of this Section, if the City Attorney determines such a reduction is warranted in the interest of justice. The factors the City Attorney shall consider in determining whether to reduce the charges to an infraction, substitute administrative remedies, or impose other penalties shall include, but not be limited to, the following:

- (1) The number of individuals attending the party, gathering or event.
- (2) The number of minors attending the party, gathering or event.
- (3) The source of alcoholic beverages and/or controlled substances.
- (4) The age of the minors and/or responsible person(s).
- (5) The ability of the responsible person(s) to pay for the specified fine or fee.

(c) The City Attorney may also impose, in addition to or in lieu on fine or fees, (i) community service work on behalf of the City, and/or (ii) training, counseling or classes relevant to the purposes of this Chapter.

(d) In the event that the responsible person who is in violation of section 11.22.020 is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for any fine imposed.

(e) The procedures provided for in this section are in addition to any other statute, ordinance or law, civil or criminal. This section in no way limits the authority of law enforcement officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this chapter.

11.22.040. Conference with City Manager

Within ten days of notice of a violation and/or applicable fees, fines or other penalties under this Chapter, a responsible person may request a conference with the City Manager to discuss the alleged violation and/or applicable fees, fines or other penalties. The request must be made in writing to the City Manager. The responsible person will be given an opportunity to be heard and may submit any and all written documentation to the City Manager relevant to the alleged violation and/or applicable fees, fines, or other penalties. Based upon the evidence, the City Manager may determine that no violation, for purposes of this Chapter, has been committed and/or that no fees, fines, or penalties will be imposed.

11.22.050 Warning

No fines, fees or other penalties shall be imposed upon a responsible person for a first violation of Section 11.22.020. Any subsequent violations within the following twelve months shall be punishable as provided by this Chapter.

11.22.060. Cost Recovery Fee for Public Safety Services

(a) In addition to any fine imposed on the person(s) responsible for the event for a violation of Section 11.22.020, the person(s) responsible for the event will be liable for the cost of providing public safety services for a second or follow-up response by public safety personnel, after a first warning has been given, excluding the warning provided by Section 11.22.030, to the person(s) responsible for the event to abate the nuisance indicating that a second or follow-up response on the same date or on any later date will result in liability for the cost of providing public safety services.

(b) The amount of the cost recovery fee for public safety services under this section shall be calculated pursuant to 11.22.010 of this article.

(c) The City does not waive its right to seek reimbursement for actual costs through other legal remedies or procedures. Any person owing money shall be liable in an action brought in the name of the city for recovery of such amount, including reasonable attorneys' fees.

11.22.070 Appeal

A responsible person may appeal a decision of this Chapter to the City Council of the City of Mission Viejo, pursuant to Section 2.040.100.”

**Section 3.** Compliance with California Environmental Quality Act.

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 4.** Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

**Section 5.** Effective Date.

This Ordinance shall become effective thirty (30) days from its adoption.

**Section 6.** Publication.

The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Mission Viejo, pursuant to all legal requirements.

PASSED, APPROVED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_,  
2008.

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Trish Kelley, Mayor

ATTEST:

\_\_\_\_\_  
Karen Hamman, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
William P. Curley III,  
City Attorney

STATE OF CALIFORNIA    )  
COUNTY OF ORANGE     ) ss.  
CITY OF MISSION VIEJO   )

I, Karen Hamman, CMC, City Clerk of the City of Mission Viejo, do hereby certify that the foregoing Ordinance No. \_\_\_\_\_ was duly introduced and placed upon its first reading at a regular meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, and thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote, to wit:

AYES:            COUNCIL MEMBERS:  
NOES:            COUNCIL MEMBERS:  
ABSENT:         COUNCIL MEMBERS:  
ABSTAINED: COUNCIL MEMBERS:

\_\_\_\_\_  
Karen Hamman, CMC, City Clerk