

SOCIAL HOST ORDINANCE

ORDINANCE NO.14889

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARSHALLTOWN, IOWA, AMENDING CHAPTER 5 OF THE CITY OF MARSHALLTOWN MUNICIPAL CODE "ALCOHOLIC BEVERAGES" BY REPEALING SECTION 5-55 THROUGH 5-68, RENUMBERING SECTIONS 5-46,5-69 THROUGH 5-72 , RENUMBERING ARTICLE III "ALCOHOL IN ESTABLISHMENT PRESENTING OR DEPICTING NUDITY OR SEXUAL CONDUCT AS ARTICLE V, ADDING ARTICLE III "ALCOHOL SALES TO MINORS AND PROHIBITION" AND ADDING ARTICLE IV "POLICE SERVICES AT PARTIES AND EVENTS WHICH ARE A THREAT TO PUBLIC PEACE, HEALTH, SAFETY OR WELFARE OR WHICH INVOLVE CONSUMPTION OF ALCOHOL OR CONTROLLED SUBSTANCES BY MINORS"

NOW, THEREFORE, the City Council of the City of Marshalltown, Iowa, DOES HEREBY ORDAIN as follows:

SECTION 1. The City Council of the City of Marshalltown, Iowa, makes the following findings:

(1) that unsupervised parties on private property where alcohol and/or controlled substances are being consumed by minors are not only unlawful but often a cause for disturbances;

(2) law enforcement should be given the ability to abate loud and disturbing gatherings which present a threat to public peace, health, safety or welfare, or gatherings where alcohol and/or control substances are being consumed by minors, in order to decrease or avoid abuse of such intoxicants by minors, physical altercations and injuries, reduce neighborhood vandalism and excessive noise disturbances, and thereby improving public safety;

(3) State law does not preempt imposing civil liability for the purposes of cost recovery upon persons who allow premises under their control to be used for underage drinking or possession of controlled substances.

(4) A specific legislative find is made by the City Council, supported by expert testimony, that preliminary breath screening tests (PBT's) which have been approved by the Department of Public Safety for use in OWI and implied consent proceedings, are accurate and reliable in determining the presence or absence of alcohol in a person's body. PBT's are valuable tools in the investigation of unlawful consumption of alcohol. At trial, evidence of the results of a PBT analysis, including the test result expressed in terms of alcohol concentration, shall be admissible on the issue of whether a person under the legal drinking age did or did not consume alcohol.

SECTION 2. "Article III. Alcohol in Establishments Presenting or Depicting Nudity or Sexual Conduct" shall be renumbered as "Article V. Alcohol in Establishments Presenting or Depicting Nudity or Sexual Conduct."

SECTION 3. Section 5-73. Alcohol Prohibited in Certain Commercial Establishments shall be renumbered as Article V, Section 5-151. Alcohol Prohibited in Certain Commercial Establishments."

SECTION 4. Sections 5-55 through 5-68 shall be repealed.

SECTION 5. Section 5-46 shall be renumbered as 5-101.

SOCIAL HOST ORDINANCE

SECTION 6. New "Article III Alcohol Sales to Minors and Prohibition" containing New Sections 5-73 through 5-124 shall be added as follows:

Secs. 5-55 – 5-100. Reserved.

ARTICLE III. ALCOHOL SALES TO MINORS AND PROHIBITION

Sec. 5-101. Selling or furnishing to minors. (with change, previously Section 5-46)

No person shall knowingly sell, give, supply or offer any alcoholic beverage, wine or beer to any person under the age of 21.

(Rev. Ords. 1950: Ord. No. 47, § 20: Ord. No. 10440, § 1, 7-11-1963)

State law reference(s)-Supplying alcoholic beverage, wine or beer to person under legal age, I.C.A. §123.49(2)h.

Sec. 5-102. Minors prohibited on certain premises. (no change, previously Section 5-69)

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

Guardian. Guardian means an individual who has been duly appointed as the guardian of a minor pursuant to Iowa Probate Code ch. 633.552-633.565 and any future amendments thereto.

Minor. Minor means any person who has not attained the lawful age for the purchase, consumption or possession of any alcoholic beverage, including beer, wine or liquor, under state laws.

b.) Except as provided in subsection (d) of this section, it shall be unlawful for the holder of a license or permit issued pursuant to the Iowa Alcoholic Beverage Control Act, I.C.A. § 123.1 et seq., for premises where more than 50 percent of the business conducted is the sale or dispensing of alcoholic beverages, and for every person employed with respect to such premises, to knowingly permit or fail to take reasonable measures to prevent entry into such premises of any and all minors. Either the chief of police or the city administrator may request, upon ten days' notice, a verified statement from a certified public accountant which establishes that more than 50 percent of the licensee's or permittee's gross sales are from the sale of goods or services other than the sale of alcoholic beverages, wine or beer, which shall not include income from cover charges, entertainment fees, drink mixes, nonalcoholic beverages, or any goods or services not sold directly on the licensee's or permittee's premises. In addition, any licensee or permittee may tender such a verified statement, at any time, so as to justify his lawful conduct of business. Failure to provide the verified statement as requested shall be considered a violation of this section, which may result in a revocation of all licensee permits issued by the city.

c.) Except as provided in subsection (d) of this section, it shall be unlawful for a minor to go onto the premises described in subsection (b) of this section.

d.) The provisions of subsections (b) and (c) of this section shall not apply when:

1.) The minor is an employee of the license or permit holder and performing scheduled duties or is performing contracted services with respect to such premises.

2.) The minor is accompanied by a parent, guardian or spouse who is not a minor.

3.) The minor is on the premises during a time that the license or permit holder has, after written notice to the chief of police or his/her designee, suspended the dispensing of alcoholic beverages on the premises or on a clearly delineated part of the premises operating under a differentiating trade name. It shall be the duty of the license or permit holder allowing minors onto the licensed premises and all employees of the licensed premises to prevent minors from purchasing, possessing or consuming alcoholic beverages thereon. Police officers shall be immediately admitted to the premises at any time. Failure to fulfill the duties set forth in this subsection shall be a violation of this section.

SOCIAL HOST ORDINANCE

4.) The licensee or permit holder has provided a separate room in which no alcoholic beverages may be served, dispensed, possessed or found. In such room minors may be allowed through an entrance that does not involve passage through any area where such alcoholic beverages are served, dispensed, possessed or found.

(Ord. No. 14293, § 1, 7-10-1989; Ord. No. 14527, § 1, 3-11-1996)

Sec.5-103. Special event exception. (editorial change, previously Section 5-70)

Notwithstanding any provision of Section 5-102, the licensee or permittee may apply for a special event exception from the chief of police and city administrator that shall allow the holder to provide entertainment to persons under legal age, subject to the following:

a.) A licensee or permittee may qualify for a special event exception when an application is submitted to the chief of police or his or her designee at least seven business days prior to the proposed special event. Such application shall include the name and address of the licensed or permitted establishment, the type of event for which an exception is applied, the proposed date for the event and the time of the event.

b.) All alcoholic liquor, wine or beer shall be removed or stored so that it is not available for sale or consumption during the period of the special event.

c.) A special event exception shall be valid through the date of the special event or for the duration of the alcoholic liquor control license, wine or beer permit, whichever is first in time.

d.) Failure to comply with the terms of this special event exception shall result in the revocation or denial of such an exception application for one year.

e.) The licensee or permittee shall post a current exception certificate in a conspicuous place in the view of patrons of the licensed or permitted establishment.

(Ord. No. 14527, § 1, 3-11-1996)

Sec. 5-104. Posting of notices prohibiting minors. (no change, previously Section 5-71)

All license or permit holders shall post a conspicuous notice at all entrances notifying all those who enter that minors are prohibited.

(Ord. No. 14527, § 1, 3-11-1996)

Sec. 5-105. Exceptions. (editorial change, previously Section 5-72)

The provisions of subsections 5-102(b) and (c) shall not apply to the holder of the license or permit at the Marshalltown Softball Complex and any event held outdoors where the premises are not enclosed by a structure, fence, tent or similar enclosure.

(Ord. No. 14527, § 1, 3-11-1996)

Secs. 5-106 – 5-124. Reserved.

SECTION 7. New Article IV “Police Services At Parties And Events Involving Consumption of Alcohol or Controlled Substances By Minors” New Sections 5-125 through 5-150 shall be added as follows:

ARTICLE IV. POLICE SERVICES AT PARTIES AND EVENTS INVOLVING CONSUMPTION OF ALCOHOL OR CONTROLLED SUBSTANCES BY MINORS

Sec. 5-125. Purpose.

a.) The control of large parties, gatherings or events on private property is necessary when such continued activity is determined to be a threat to the peace, health, safety or general welfare of the public;

b.) Police officers have been required to make repeated return calls to the location of a party, gathering or event in order to disperse uncooperative participants, which constitutes a drain of manpower and resources, often depriving other areas of the city of necessary levels of police protection;

SOCIAL HOST ORDINANCE

- c.) All of these circumstances create a significant hazard to the safety of the police officers and to the public in general and constitutes a public nuisance; and
- d.) The consumption of alcohol and illegal drugs by minors is harmful to the health, safety and welfare of the community and imposing both criminal and financial liability on adults permitting such conduct is an effective means to prevent consumption of alcohol and illegal drugs by minors.

Sec. 5-126. Definitions.

For the purposes of this article, the following definitions apply:

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

"*Alcohol beverage*" 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.

"*Controlled substances*" or "*Illegal Drugs*" shall include all narcotics or drugs, the possession which is illegal under the laws of the State of Iowa as defined under the Penal Code, Health and Safety Code, and related statutes.

"*Enforcement Services*" includes the salaries and benefits of police officers or other code enforcement personnel for the amount of time actually spent in responding to, or in remaining at, the party, gathering, or event and the administrative costs attributable to the incident; the actual cost of any medical treatment to injured police officers or other code enforcement personnel; and the cost of repairing any damaged City equipment or property; and the cost arising from the use of any damaged equipment in responding to or remaining at the party, gathering or event.

"*Juvenile*" means any person under eighteen (18) years of age.

"*Guardian*" means (a) a person who, under court order, is the guardian of the person of a minor; or (b) a public or private agency with whom a minor has been placed by the court.

"*Minor*" means any person under twenty-one (21) years of age.

"*Parent*" means a person who is a natural parent, adoptive parent, or step-parent of another person.

"*Party, gathering, or event*" means a group of persons who have assembled or are assembling for a party, social occasion or social activity.

"*Person(s) responsible for the event*" includes, but is not limited to:

- a) The person(s) who owns, rents, leases, or otherwise has control of the premises where the party, gathering or event takes place;
- b) the person(s) in charge of the premises; or
- c) the person(s) who organized the event. If a person responsible for the event is a juvenile, then the parents or guardians of that juvenile will be jointly and severally liable for the costs incurred for enforcement services pursuant to this chapter.

"*Special security assignment*" means the assignment of police officers and services to a location of a party, gathering or event that violates the law.

Sec. 5-126. Enforcement services at large parties, gatherings or events requiring a response.

When a large party, gathering or event occurs on private property and any police officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, the person(s) responsible for the event shall be liable jointly and severally for the cost of providing such enforcement services as may be necessary to control the threat to the public peace, health, safety or general welfare, including the actual cost of enforcement services provided during the response as a result of conduct violating Sections in this Article.

SOCIAL HOST ORDINANCE

Sec. 5-127. Unsupervised Consumption of Alcohol by Minor at Private Property.

- a.) Except as permitted by state law, no minor shall consume in any public place or any place open to the public any alcoholic beverage and/or controlled substance, or consume at any place not open to the public any alcoholic beverage and/or controlled substance.
- b) A violation of this section shall constitute a misdemeanor punishable as provided in section 1-8.

Sec. 5-128. Serving Alcohol and/or controlled substances to Minors at Parties, Gatherings or Events on Private Property.

- a) Except as permitted by Iowa Code, no person shall permit, allow, or host a party, gathering, or event at his or her place of residence or other private property, place, or premises under his or her control where three (3) or more persons are present and alcoholic beverages and/or illegal drugs are being consumed by any minor.
- b) This section shall not apply to conduct involving the use of alcohol which occurs exclusively between a minor child and his or her parent or legal guardian.
- c) A violation of this section shall constitute a misdemeanor punishable as provided in section 1-8.

Sec. 5-129. Enforcement services fee.

- a) The enforcement services fee shall include the actual reasonable cost of providing personnel and equipment. Such fee is deemed to be supplementary to all other applicable fines and penalties, and the city may seek reimbursement for actual costs through any available legal remedies or procedures.
- b) The amount of such fee charged shall be deemed a debt owed to the city by the person or persons receiving such services, and if minors, their parents or guardians, recoverable in an action brought in the name of the city for recovery of such amount, plus court costs and including the city's reasonable attorney fees.

Sec. 5-130. Appeals.

Any individual aggrieved by the decision of the chief of police to assess any penalty under the provisions of this article may request an administrative hearing before a hearing officer designated by the city administrator by filing a written notice with the city clerk's office within ten days of the violation notice.

Sec. 5-131. Reservation of Legal Options.

The City of Marshalltown does not waive its right to seek reimbursement for actual costs of enforcement services through other legal remedies or procedures. The procedure provided for in this chapter is in addition to any other statute, ordinance or law, civil or criminal. This chapter in no way limits the statutory authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Article.

Sec.5-132-5-150. Reserved.

SECTION 8. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid, unenforceable or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 9. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 10. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published in the Times Republican, a newspaper of general circulation, printed and published in the City of Marshalltown.

SOCIAL HOST ORDINANCE

Passed this 26th day of September, 2011, and signed this ___ day of September, 2011.

CITY OF MARSHALLTOWN, IOWA

Gene L. Beach, Mayor

ATTEST:

Shari L. Coughenour, CMC, City Clerk