

ORDINANCE NO. 2006-1260

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA AMENDING TITLE 10, OF THE SAN MARCOS MUNICIPAL CODE BY ADDING CHAPTER 10.11, CONCERNING CONSUMPTION OF ALCOHOL AND CONTROLLED SUBSTANCES BY MINORS

WHEREAS, the members of the San Marcos City Council are concerned about unsupervised parties on private property where alcohol and/or controlled substances are made available to minors for consumption, which parties may be excessively loud and disturbing to the neighbors and may result in neighborhood vandalism, thus adversely affecting public safety; and

WHEREAS, in the opinion of this City Council, the ability of law enforcement to abate loud and disturbing gatherings or gatherings where alcohol and/or controlled substances are consumed by minors on private property will result in a decrease in abuse of intoxicants by minors and physical altercations and injuries, will reduce neighborhood vandalism and excessive noise disturbances, thereby improving public safety; and

WHEREAS, Sheriff's Deputies have been required to make as many as three return calls to an event or gathering held on private property to disperse uncooperative participants, which constitutes a drain of manpower and resources, often leaving other areas of the City without minimal levels of police protection, which creates a significant hazard to the safety of the public and law enforcement and constitutes a public nuisance; and

WHEREAS, 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 such activity; and

WHEREAS, in the further opinion of this City Council, adults who own, rent, lease or otherwise have control of the premises where parties, gatherings or events take place and/or adults who organize such events should be held responsible for costs and expenses that may be incurred when such premises are utilized for underage drinking or possession of controlled substances; and

WHEREAS, State law does not preempt the imposition of civil liability for cost recovery under the circumstances described above.

NOW, THEREFORE, THE CITY COUNCIL of the City of San Marcos, California, in accordance with the freedom afforded to charter cities generally and by the Charter of the City of San Marcos, specifically DOES ORDAIN AS FOLLOWS:

SECTION 1. That Title 10 of the San Marcos Municipal Code be amended to add a new Chapter 10.11, entitled "Police Services at Parties and Events and Consumption of Alcohol and Controlled Substances by Minors," as follows:

**CHAPTER 10.11
POLICE SERVICES AT PARTIES AND EVENTS AND CONSUMPTION OF
ALCOHOL AND CONTROLLED SUBSTANCES BY MINORS**

SECTIONS:

- 10.11.010 **Definitions of Words or Phrases**
- 10.11.020 **Law Enforcement and/or Code Enforcement Services at Parties, Gatherings or Events Requiring a Second Response**
- 10.11.030 **Unsupervised Consumption of Alcohol by Minor at Private Party**
- 10.11.040 **Serving Alcohol and/or Controlled Substances to Minors at Parties, Gatherings or Events on Private Property**
- 10.11.050 **Duty to Inspect**
- 10.11.060 **Law Enforcement, Code Enforcement Services Fees**
- 10.11.070 **Reservation of Legal Options**

10.11.010 Definitions of Words or Phrases. Unless the context requires otherwise, the definitions set forth in this section shall govern the construction of this chapter.

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

(b) **"Alcoholic 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.

(c) **"Controlled Substances"** or **"Illegal Drugs"** 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 & Safety Code, and related statutes.

(d) **“Enforcement Services”** includes the salaries and benefits of law enforcement and/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 law enforcement personnel and/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.

(e) **“Juvenile”** means any person less than eighteen (18) years of age.

(f) **“Guardian”** means (1) a person who, under court order, is the guardian of the person of a minor; or (2) a public or private agency with which a minor has been placed by the court.

(g) **“Minor”** means any person less than twenty-one (21) years of age.

(h) **“Parent”** means a person who is a natural parent, adoptive parent, foster parent or stepparent of another person.

(i) **“Party, gathering or event”** means a group of three (3) or more persons who have assembled or are assembling for a party, social occasion or social activity.

(j) **“Responsible Party(ies)” or “Person(s) Responsible”** includes, but is not limited to: (1) the person(s) who owns, rents, leases or otherwise has control of the premises where the party, gathering or event takes place; (2) the person(s) in charge of the premises; or (3) 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.

10.11.020 Law Enforcement and/or Code Enforcement Services at Parties, Gatherings or Events Requiring a Second Response.

Any person responsible for a loud or unruly event shall be civilly liable to the city for all costs incurred by the city arising out of a second response which is made by law enforcement or the fire department to such event where:

(a) Law enforcement or the fire department initially responded to the event during the preceding 12 hour period;

(b) At the time of making such initial response, personnel from the law enforcement agency or fire department warned such responsible person(s), in

writing, that the event was being conducted in an unlawful manner, and that if law enforcement or fire department personnel were required to respond a second time to the event, such person would be assessed a second response fee and/or be held responsible for the actual cost of enforcement services provided during the response; and

(c) Following such initial response, law enforcement agents or the fire department were required to respond a second time to the event by reason of the fact that the event continued to be conducted in an unlawful manner, notwithstanding such written warning.

10.11.030 Unsupervised Consumption of Alcohol or Controlled Substance by Minor at Private Party, Public Place or Place Open to Public.

(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 by a fine of One Thousand Dollars (\$1,000) or by imprisonment for a period of not to exceed six (6) months, or by both fine and imprisonment.

10.11.040 Serving Alcohol and/or Controlled Substances to Minors at Parties, Gatherings or Events on Private Property. Except as permitted by Article 1, Section 4 of the Constitution of the State of California, no person shall knowingly permit 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 alcoholic beverages and/or illegal drugs are being consumed by any individual who is known by the responsible parties to be a minor. A violation of this section shall constitute an infraction punishable by fine as set forth in the City of San Marcos Infraction and Misdemeanor Bail Schedule per Section 1.12.010 of the City of San Marcos Municipal Code. This section shall not apply to conduct involving the use of alcohol that occurs exclusively between a minor child and his or her parent or legal guardian.

10.11.050 Duty to Inspect The responsible party(ies) who permits or allows a party, gathering or event as specified in Section 10.11.040 of this Chapter has a duty to inspect the drivers license or other government issued identification card of each person who reasonably appears to be under the age of thirty (30) in order to ensure that they are over the legal age for consuming alcohol. If the responsible party(ies) fails to inspect the identification of a person consuming alcohol, and the person is in fact a minor, the responsible party has violated Section 10.11.040 of this Chapter.

10.11.060 Law Enforcement, Code Enforcement Services Fees.

(a) The person(s) responsible for the event shall be liable for the cost of providing law enforcement and/or code enforcement services in response to a party, gathering or event in which minors have obtained, possessed or consumed alcoholic beverages. The law enforcement and/or code enforcement services fee shall include the cost of personnel and equipment. Such fee is deemed to be supplementary to all other applicable fines and penalties.

(b) The amount of such fee charged shall be deemed a debt to the City of the person or persons receiving such services and if such person or persons be minors, then the amount shall be deemed a debt of their parents or guardians. Any person owing money shall be liable in an action brought in the name of the City for recovery of the actual costs of enforcement. Actual costs shall include, in addition to the law and/or code enforcement service fee, costs and expenses in bringing such recovery action, including, but not limited to, reasonable attorneys' fees, witness fees and associated costs and expenses. Such costs and expenses shall be in addition to the applicable fines and penalties referenced in sections 10.11.020, 10.11.030 and 10.11.040 above, and any other fines and penalties provided by law.

10.11.070 Reservation of Legal Options. The City 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 law enforcement, peace officers or private citizens to cite and/or make arrests for any criminal offense arising out of conduct regulated by this Article.

SECTION 2. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 3 This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance, or the title thereof, as a summary as required by state law.

SECTION 4. The City Clerk shall certify to the passage of this Ordinance and cause the same to be published in accordance with the provisions of State Law in a newspaper of general circulation designated for legal notice publication in the City of San Marcos.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos held on the 24th day of January, 2006 and thereafter,

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos held on the 14th day of February, 2006, by the following roll call vote:

AYES: COUNCILMEMBERS: DESMOND, HARRIS, MARTIN, PRESTON

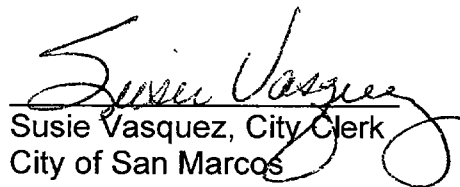
NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: SMITH




F.H. "Corky" Smith, Mayor
City of San Marcos

ATTEST:



Susie Vasquez, City Clerk
City of San Marcos

APPROVED AS TO FORM:



Helen Holmes Peak, City Attorney
City of San Marcos