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DATE: March 21, 2007  
TO: Honorable Mayor and City Councilmembers  
FROM: Police Department  
SUBJECT: **SOCIAL HOST ORDINANCE UPDATE**

**SYNOPSIS**

Staff recommends that the City Council introduce an ordinance of the City Council of the City of Oceanside amending Sections 20.27 and 20.28 concerning alcohol and illegal drug offenses by minors and juveniles to add a knowledge element to the language of the City's Social Host Ordinance.

**BACKGROUND**

On May 7, 2003, the Oceanside City Council approved Ordinance 03-OR289-1 (Social Host Ordinance) sections 20.27-20.31, relating to prohibitions against consumption of alcoholic beverages by minors, and hosting or allowing gatherings where minors consume alcoholic beverages. The purpose of the ordinance was to protect public health, safety, and welfare, to enforce laws prohibiting consumption of alcohol by minors, and to reduce costs of providing police response to parties by shifting the financial burden to irresponsible hosts. The ordinance was intended to remedy the problems caused by underage drinking parties, including alcohol abuse, vandalism, excessive noise, traffic accidents, and physical altercations and injuries. The ordinance made it unlawful for a minor, a person under the age of twenty-one, to consume alcohol at any public place, place open to the public, or place not open to the public unless supervised by the minor's parent or guardian. Further, the ordinance made it unlawful for a person to host a party at a premise under his or her control where a minor consumes alcohol.

On September 7, 2004, the San Diego Superior Court Appellate Division held, in an unpublished opinion, that the section of the San Diego City Social Host Ordinance that held a party host criminally liable violated a person's right to due process because the court believed a person could not be convicted of the offense if the host were unaware or would not reasonably know that a party was taking place or minors were consuming alcohol. The current language in Oceanside's Social Host Ordinance is similar to that in the San Diego City ordinance that was ruled "constitutionally impermissible". Following this ruling, both the City of San Diego and San Diego County amended their social host ordinances to add a "mens rea", or intent, element.

## **ANALYSIS**

Consumption of alcoholic beverages by minors in public and private locations presents a myriad of problems for the minor, the community, and law enforcement. Even worse, some adults condone this behavior and supply alcohol to minors at a parties in their homes. An effective Social Host Ordinance gives law enforcement an important tool to deter underage drinking parties, and provides consequences for those who choose to ignore the underage drinking laws and encourage behavior that exposes our community to unnecessary health and safety risks.

Based on the recent San Diego Superior Court Appellate decision, the Police Department has identified an issue with the current language of the Social Host Ordinance that could render it unenforceable if challenged in court. The proposed amendments to the Social Host Ordinance add a knowledge element by providing that that it is unlawful for any person to host a party where that person knows, or reasonably should have known, that a minor has consumed an alcoholic beverage.

## **FISCAL IMPACT**

There is no fiscal impact associated with this request.

## **COMMISSION OR COMMITTEE REPORT**

Pending review scheduled on March 15, 2007.

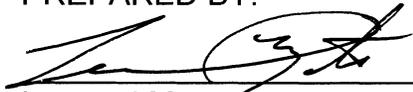
## **CITY ATTORNEY'S ANALYSIS**

The proposed amendments add a "mens rea", or knowledge/intent, element to Chapter 20's Social Host Ordinance. While the unpublished Superior Court Appellate Department ruling that prompted this change is not citable as legal precedent, it is an indication of how a trial or appellate court might analyze Chapter 20. The proposed amendments, while making enforcement of the Social Host Ordinance more fact specific, will provide greater constitutional safeguards in its application to the citizens of Oceanside.

**RECOMMENDATION**

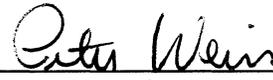
Staff recommends that the City Council introduce an ordinance of the City Council of the City of Oceanside amending Sections 20.27 and 20.28 concerning alcohol and illegal drug offenses by minors and juveniles to add a knowledge element to the language of the City's Social Host Ordinance.

PREPARED BY:



Leonard Mata  
Sergeant, Administrative Services

SUBMITTED BY:

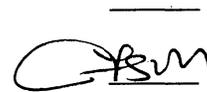


Peter A. Weiss  
Interim City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Frank S. McCoy, Chief of Police



Attachments: City Ordinance 03-OR289-1 (amended language)

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
OCEANSIDE AMENDING SECTIONS 20.27 AND 20.28,  
CONCERNING ALCOHOL AND ILLEGAL DRUG OFFENSES  
BY MINORS AND JUVENILES

WHEREAS, on April 16, 2003, pursuant to Ordinance No. 03-OR289-1 the City Council of the City of Oceanside amended Chapter 20 of the Oceanside City Code by adding Sections 20.27, 20.28, 20.29, 20.30 and 20.31 concerning alcohol and illegal drug offenses by minors and juveniles, and requiring reimbursement from responsible persons for the cost of enforcement services; and

WHEREAS, on April 16, 2003, the City Council of the City of Oceanside found and declared that the purpose of the Ordinance was:

To protect public health, safety and general welfare;

To enforce laws prohibiting the consumption of alcohol and/or controlled substances by minors; and

To recover costs of providing police services to parties, gatherings, or events requiring a response;

WHEREAS, the City Council finds and declares that the original purpose of Ordinance No. 03-OR289 was justified and was a proper exercise of the power and authority of the City to regulate consumption of alcohol by minors because this consumption of alcohol by minors impacts the health, safety, and general welfare of Oceanside's citizens and communities;

WHEREAS, Section 20.28 of Ordinance No. 03-OR289 was substantially similar to San Diego Municipal Code Section 56.62(a);

WHEREAS, on September 7, 2004, the Appellate Division of the San Diego Superior Court held, in a unpublished opinion, that San Diego Municipal Code Section 56.62(a), as originally enacted on May 6, 2003, was "constitutionally impermissible" because of the lack of a mens rea [or intent] in Section 56.62(a); and

1  
2 WHEREAS, the City Council hereby amends Sections 20.27 and 20.28 to add the  
3 requisite intent to the Ordinance to conform with state and federal law and to set forth the  
4 remedies available to the City for violations of this Ordinance.

5 NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

6 SECTION 1. Section 20.27 is amended to add a definition of “Premises” as follows:

7 “Section 20.27 Definitions.

8 ...

9 “*Premises*” means any residence or other private property, place, or premises including  
10 any commercial or business premises.”

11 SECTION 2. Section 20.28 is amended as follows:

12 “Section 20.28. Hosting, Permitting, or Allowing a Party, Gathering, or Event  
13 Where Minors Consume Alcoholic Beverages or Controlled Substances Prohibited

14 (a) It is unlawful for any person having control of any Premises to knowingly suffer,  
15 permit, allow, or host a party, gathering, or event at said Premises where three (3) or more  
16 persons are present whenever the person having control of the Premises either knows a minor  
17 consumed an alcoholic beverage and/or a controlled substance or reasonably should have  
18 known that a minor consumed an alcoholic beverage and/or a controlled substance. For  
19 purposes of this subsection, a person reasonably should have known that a minor consumed an  
20 alcoholic beverage and/or a controlled substance if that person did not take reasonable steps to  
21 prevent the consumption of an alcoholic beverage and/or controlled substance by a minor as set  
22 forth in subsection (b) of this section. A violation of this section is punishable as a  
23 misdemeanor pursuant to Section 1.7. This section shall not apply to conduct involving the use  
24 of alcohol which occurs exclusively between a minor child and his or her parent or legal  
25 guardian, as permitted by Article 1, Section 4, of the California Constitution, or conduct which  
26 is otherwise permitted under state or federal law.

27 (b) Reasonable steps include controlling access to alcoholic beverages at the gathering  
28 when minors are present; controlling the quantity of alcoholic beverages at the gathering when  
minors are present; verifying the age of persons attending the gathering by inspecting driver’s  
licenses or other government-issued identification cards to ensure that minors do not consume  
alcoholic beverages and/or controlled substances while at the gathering; and supervising the  
activities of minors at the gathering.”

SECTION 3. Severability.

1 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be  
2 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
3 shall not affect the validity of the remaining portions of this Ordinance. The City Council  
4 hereby declares that it would have passed this ordinance and adopted this Ordinance and each  
5 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section,  
6 subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

7 SECTION 4. The City Clerk of the City of Oceanside is hereby directed to publish this  
8 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
9 days after its passage in the North County Times, a newspaper of general circulation published  
10 in the City of Oceanside.

11 SECTION 5. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
12 from and after its final passage.

13 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,  
14 California, held on the \_\_\_ day of \_\_\_\_\_, 2007, and, thereafter,

15 PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
16 Oceanside California, held on the \_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

17 AYES:

18 NAYS:

19 ABSENT:

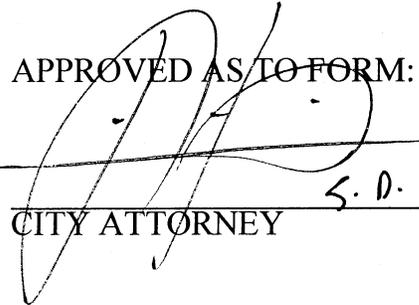
20 ABSTAIN:

21 MAYOR OF THE CITY OF OCEANSIDE

22  
23 ATTEST:

24 APPROVED AS TO FORM:

25 \_\_\_\_\_  
26 CITY CLERK

27   
28 \_\_\_\_\_  
CITY ATTORNEY