

ORDINANCE NO. 2009-07

AN ORDINANCE AMENDING CHAPTER 3 BY THE ADDITION OF A NEW ARTICLE 3 ENTITLED "MISCELLANEOUS" AND BY THE ADDITION OF A NEW SECTION 3-301 OF THE PERRY MUNICIPAL CODE 2004 (2nd BIENNIAL SUPPLEMENT), ENTITLED "PERMITTING OR ALLOWING GATHERINGS WHERE MINORS ARE CONSUMING ALCOHOLIC BEVERAGES"; PROVIDING FOR REPEALER; SAVINGS CLAUSE; CODIFICATION; SEVERABILITY; AND EMERGENCY.

EMERGENCY ORDINANCE

NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PERRY, OKLAHOMA, THAT:

WHEREAS, the City of Perry, Oklahoma, acting through the City Council ("Council") finds that parties, gatherings, or events ("gatherings") on private property where alcoholic beverages, to include intoxicating beverages and low point beer, are consumed by minors, who are under the legal age to consume alcohol in the State of Oklahoma, are harmful to the minors themselves and a threat to public health; and

WHEREAS, the Council finds that minors often obtain alcoholic beverages at gatherings held at private residences or other private property, places or premises, including rented commercial premises, which are under the control of a person who knows or should know of the consumption of alcoholic beverages by minors; further, the Council finds that persons responsible for the occurrence of such gatherings often fail to take reasonable steps to prevent the consumption of alcoholic beverages by minors at these gatherings; and

WHEREAS, control of gatherings on private property where alcoholic beverages are consumed by minors is necessary when such activity is determined to be a threat to the public peace, health, safety, or general welfare of the public; and

WHEREAS, police officers often are required to make multiple responses to the location of a gathering where alcoholic beverages are consumed by minors in order to disperse uncooperative participants, causing a drain on public safety resources and in some cases leaving other areas of the City with

delayed police response; and

WHEREAS, problems associated with gatherings where alcoholic beverages are consumed by minors are difficult to prevent and deter unless the City Police Department has the legal authority to arrest offenders and direct the host to disperse the gathering; and

WHEREAS, police activity to abate gatherings on private property where alcohol is consumed by minors will result in a decrease in abuse of alcohol by minors, physical alterations and injuries, neighborhood vandalism, and excessive noise disturbance, thereby improving public safety; and

WHEREAS, it is the intent of the Council that criminal liability under the municipal code, applies to any person in control of the private property who knowingly hosts, permits, or allows a party, gathering, or event where minors are present and an alcoholic beverage is being consumed by any minor, where the person in control of the private property knows or reasonably should know that a minor has consumed an alcoholic beverage; and

WHEREAS, it is the further intent of the Council to impose a duty on any person having control of any residence or other private property, place or premises, including any commercial premises, who knowingly hosts, permits, or allows a party, gathering, or event, to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering, where the person in control of the private property knows or reasonably should know that a minor has consumed an alcoholic beverage; and

WHEREAS, pursuant to the City's statutory and home rule authority to legislate regarding matters that protect the health, safety and welfare of the public, this ordinance is hereby adopted.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PERRY, OKLAHOMA:

Section I. That Chapter 3 of the Perry Municipal Code 2004 (2nd Biannual Supplement) is amended by the addition of a new Article 3 entitled Miscellaneous and a new Section 3-301 which shall read as follows:

ARTICLE 3

MISCELLANEOUS

Section 3-301 Permitting or Allowing Gatherings Where Minors are Consuming Alcoholic Beverages

A. Definitions. For purposes of Section 3-301, the following definitions shall apply:

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

"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 ($\frac{1}{2}$ of 1%) or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. This term includes intoxicating beverages and low point beer as defined herein.

"Gathering" is party, gathering, or event, where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

"Intoxicating Beverage" includes beverages containing more than three and two-tenths percent (3.2%) alcohol by weight.

"Legal Guardian" means (1) a person who, by court order, is the guardian of the person of a minor; or (2) a public or private agency with whom a minor has been placed by the court.

"Low Point Beer" means and includes beverages containing more than one-half of one percent ($\frac{1}{2}$ of 1%) alcohol by volume, and not more than three and two-tenths percent (3.2%) alcohol by weight, including but not limited to beer or cereal malt beverages obtained by the alcoholic fermentation of an infusion of barley or other, grain, malt or similar products.

"Minor" means any person under twenty-one years of age.

"Parent" means a person who is a natural parent, adoptive parent, foster parent, or stepparent of another person.

"Premises" means any residence or other private property, place, or premises, including any commercial or business premises.

"Response costs" are the costs associated with responses by law enforcement, fire, and other emergency response providers to a gathering, including but not limited to: (1) salaries and benefits of law enforcement, code enforcement, fire, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a gathering, and the administrative costs attributable to such responses; (2) the cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a gathering; (3) the cost of repairing any City equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at, or leaving the scene of a gathering; and (4) any other allowable costs related to the enforcement of this section.

B. Consumption of Alcohol by Minor in Public Place, Place Open to Public, or Place not open to Public. Except as permitted by state law, it is unlawful for any minor to:

1. Consume at any public place, or any place open to the public, an alcoholic beverage; or

2. Consume at any place not open to the public any alcoholic beverages, unless in connection with the consumption of the alcoholic beverage, that minor is being supervised by his or her parent or legal guardian.

C. Hosting, Permitting, or Allowing a Party, Gathering, or Event Where Minors Consuming Alcoholic Beverages Prohibited.

1. In General

a. It is the duty of any person having control of any premises, who knowingly hosts, Permits, or allows a gathering at said premises to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps are controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages

present at the gathering; verifying the age of persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure: that minors do not consume alcoholic beverages while at the gathering; and supervising the activities of minors at the gathering.

- b. It is unlawful for any person having control of any premises to knowingly host, permit, or allow a gathering to take place at said premises where at least one minor consumes an alcoholic beverage, whenever the person having control of the premises either knows that the minor has consumed an alcoholic beverage or reasonably should have known that a Minor consumed an alcoholic beverage or failed to take all reasonable steps to prevent the consumption of an alcoholic beverage by a minor as set forth in subsection C.1.a off this section.
2. This Section shall not, apply to conduct involving the use of alcoholic beverages that occurs exclusively between a minor and his or her parent or legal guardian.
3. Nothing in this section should be interpreted to prohibit any family activity held in the confines of the family home from providing the use of alcohol to immediate family members within the supervision of parents and guardians. However, if a minor leaves such a family gathering intoxicated and is found in public then said providers of alcohol will be held responsible in the same manner as a non-family gathering.
4. Nothing in this section should be interpreted to prohibit any religious practice which includes the use of alcohol. However, if a minor leaves such a religious gathering intoxicated and is found to be in public then said providers of alcohol will be held responsible in the same manner as a nonreligious gathering.

5. This section shall not apply to any premises licensed by the State of Oklahoma to dispense alcoholic beverages.
6. Reservation of Legal Options. Violation of this section may be prosecuted by the City criminally, civilly, and/or administratively as provided by this code. The City may seek administrative fees and response costs associated with enforcement of this section through all remedies or procedures provided through all remedies or procedures provided by statute, ordinance, or law. This section shall not limit the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this section, nor shall they limit the City's ability to initiate, and prosecute any criminal offense arising out of the same circumstances necessitating the application of this section.
7. Local Authority

This Section shall not apply where prohibited or preempted by state or federal law.

Section II. REPEALER. All ordinances or parts thereof which are inconsistent with this ordinance are hereby repealed.

Section III. SAVINGS CLAUSE. Nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding now pending in any court, or any rights acquired or liability incurred nor any cause or causes of action accrued or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired or affected by this ordinance.

Section IV. CODIFICATION. This ordinance shall be codified as herein provided.

Section V. SEVERABILITY. If any one or more of the sections, sentences, clauses or parts of this ordinance, chapter or section shall for any reason be held invalid, the invalidity of such section, clause or part shall not affect or prejudice in any way the applicability and validity of any other provision of

this ordinance. It is hereby declared to be the intention of the Mayor and Council of the City of Perry that this section of the Perry Municipal Code would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section VI. PENALTY. Any person who shall violate the provisions of this section shall be deemed guilty of an offense against the City and upon conviction thereof shall be punished with fine of Five Hundred Dollars (\$500.00), and court costs and statutory penalties and assessments.

Section VII. EMERGENCY. WHEREAS, it being immediately necessary for the preservation of the peace, health, safety and public good of the City and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect in order to establish regulations concerning minors access to alcohol and offenses of third parties that permit the same; By reason whereof, this Ordinance shall take effect and be in full force and effect after its passage, as provided by law.

Approved and executed this 18th day of May 2009.

THE CITY OF PERRY, OKLAHOMA

Charles Hall, Mayor

(Seal)
ATTEST:

Kyla Golay, City Clerk

Approved as to Form:

Jim Davis, City Manager

Approved as to Form and Legality:

Bryce S. Kennedy, City Attorney