

CLAYTON COUNTY ORDINANCE #5-2020

SOCIAL HOST

TITLE

This ordinance shall be known and may be cited and referred to as the Clayton County Social Host Ordinance providing penalties for adults knowingly providing alcoholic beverages and/or controlled substances to underage persons at social gatherings.

SECTION 1. PURPOSE

Pursuant to the authority granted under Iowa Code Chapter 331, this ordinance is enacted to protect and preserve the rights, privileges, and property of the residents of Clayton County and to preserve and improve the peace, safety, health, welfare, comfort and convenience of the residents of Clayton County. The purpose of this ordinance is to prohibit the consumption of alcoholic beverages and/or controlled substances by persons under the legal age of twenty-one (21) at gatherings where adult persons know or have reason to know or allow or permit underage persons to drink alcoholic beverages and/or use controlled substances on property they own or control.

The Clayton County Board of Supervisors finds that the occurrence of social gatherings at premises where alcohol beverages are served to, or consumed by, persons under the legal drinking age is harmful to such persons themselves and the threat to public welfare, health and safety. The Surgeon General's Call to Action (2007) is hereby incorporated by reference, as further support of the health, safety and public welfare concerns that exist with underage drinking.

The Clayton County Board of Supervisors further finds that persons under legal drinking age often attend gatherings where alcohol beverages and/or controlled substances are brought or made available, and that the persons who are in control of such premises either have reasons to know or knowingly tolerating, allowing, or permitting such drug and alcohol use to occur. This ordinance will establish penalties for persons who know or have reason to know or permit or allow underage drinking or drug use and will encourage those persons to ensure that those activities are not occurring on premises under their control.

SECTION 2. DEFINITIONS

For use in this ordinance, certain terms or words used herein shall be interpreted or defined as follows:

- a. "Adult Person" means any person age eighteen (18) or older.
- b. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin, or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produces.
- c. "Alcoholic beverage" means any beverage in any form that contains more than one half (1/2) of one percent (1) of alcohol by volume including alcoholic liquor, wine, or beer.
- d. "Controlled Substances" means a drug, substance, or immediate precursor in schedules I through V of Subchapter II of Iowa Code §124.
- e. "Emergency Responders" means firefighters, law enforcement officers, emergency medical service personnel, and other personnel having emergency response duties.
- f. "Emergency Response" means any incident requiring response by firefighting, law enforcement, ambulance, medical, or other emergency services.
- g. "Enforcement Services" means the salaries and benefits of emergency responders for the amount of time actually spent responding to or remaining at an event, gathering, or party and

administrative costs attributable to the incident; the actual costs for medical treatment for any injured emergency responder, and the costs of repairing any damage to equipment or vehicles.

- h. "Event, gathering or party" means any group of three (3) or more persons who have assembled or gathered together for a social occasion or other activity.
- i. "Juvenile" means a person under the age of eighteen (18).
- j. "Legal age" means twenty-one (21) years of age or more.
- k. "Parent" means any person having legal custody of a juvenile: (1) as a natural parent, adoptive parent, or step-parent; (2) as a legal guardian; or (3) as a person to whom legal custody has been given by order of the court.
- l. "Person" means any individual, partnership, corporation or any association of one or more individual.
- m. "Possession or Control" means actual possession or constructive possession based on facts, which permit the inference of intent to possess or control alcoholic beverages.
- n. "Premises" means any home, yard, farm, field, land, apartment, condominium, hotel or motel room, other dwelling unit, hall or meeting room, garage, barn, park, tent, camper, recreational vehicle, or any other place conducive to assembly, public or private, whether occupied on a permanent or temporary basis, whether occupied as a dwelling or specifically for an event, gathering, or party, and whether owned, leased, rented or used with or without permission or compensation.
- o. "Public place" means the same as defined in Iowa Code section 123.3(27).
- p. "Social Host" means any person who aids, allows, entertains, organizes, supervises, controls or permits an event, gathering or party. This includes but is not limited to: (1) the person (see section K. above) who owns, rents, leases, or otherwise has control of the premises where the event, gathering or party takes place; (2) the person(s) in charge of the premises; or (3) the person(s) responsible for organizing the event, gathering or party.
- q. "Underage person" means any person under the age of twenty-one (21).

SECTION 3. AFFIRMATIVE DUTIES

It is the duty of the social host of an event, gathering or party to take all reasonable steps to prevent alcoholic beverages and/or controlled substances from being possessed or consumed by underage persons on the premises. Reasonable steps include, but are not limited to:

- a. Controlling underage persons' access to alcoholic beverages;
- b. Verifying that the person being served is over twenty-one (21) years of age, in the possession of, or consuming alcoholic beverages at the event, gathering or party by inspecting driver's licenses or other government-issued identification cards;
- c. Supervising the activities of underage persons at the party; and
- d. Notifying law enforcement of underage possession or consumption of alcoholic beverages and/or controlled substances and allowing law enforcement to enter the premises for the purpose of stopping the possession or consumption by underage persons.

SECTION 4. PROHIBITED ACTS

It is unlawful for any social host [of an event, gathering or party on the social host's premises] to knowingly permit or allow underage persons to consume or possess alcoholic beverages and/or controlled substances on the premises, whether or not the social host is present on the premises.

It is unlawful for a social host to host an event, gathering or party [on the social host's premises] when the social host knows or reasonably should know that an underage person has consumed an alcoholic beverage and/or controlled substances, or possessed an alcoholic beverage with the intent to consume it, [and the person fails to take reasonable steps to prevent the possession or consumption by the

underage person]. A social host who hosts such an event, gathering or party does not have to be present at the time the prohibited act occurs.

A social host has an affirmative defense if the social host took reasonable steps outlined in Section 3 of this ordinance to prevent the possession or consumption of alcohol and/or controlled substances, or notified law enforcement and/or allowed law enforcement to enter the premises for the purpose of stopping illegal activities.

SECTION 5. EXCEPTIONS

This Ordinance does not apply to actions permitted under Iowa Code Section 123.47(2) or to legally protected religious observances or to situations where underage persons are lawfully in possession of alcoholic beverages during the course and scope of employment.

SECTION 6. PENALTIES

A violation of this ordinance is a county infraction as provided in Iowa Code §331.307. A county infraction is a civil offense not punishable by jail or imprisonment. A violation of this ordinance shall be punishable by the following penalties.

- a. A first offense shall be punishable by a civil penalty of five hundred dollars (\$500.00) plus applicable surcharges and court costs.
- b. A second or subsequent offense shall be punishable by a civil penalty of seven hundred fifty dollars (\$750.00) plus applicable surcharges and court costs.
- c. The County may also seek reimbursement for enforcement services provided by emergency responders related to the event, gathering or party.

SECTION 7. EVIDENCE OF CONSUMPTION

A specific legislative finding has been made by the Board of Supervisors, supported by expert testimony, that preliminary breath screening tests (PBTs), which have been approved by the Department of Public Safety for use in Public Intoxication cases, are accurate in determining the presence of absence of alcohol in a person's body. Such devices are valuable tools in the investigation of unlawful consumption of alcohol. Therefore, at trial, evidence obtained during the administration of preliminary breath testing, 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.

Law enforcement currently uses "field test kits" to aid in preliminary testing of controlled substances. Any controlled substance found during an investigation may be seized as evidence and sent to the Iowa Division of Criminal Investigation Lab for further testing which may result in additional criminal charges being filed. Results of the field test kits will be admissible as evidence at trial.

SECTION 8. ENFORCEMENT

The Clayton County Sheriff's Office shall have primary, but not exclusive, enforcement responsibility for this Ordinance.

SECTION 9. JURISDICTION

The provision of this Ordinance shall apply throughout Clayton County, Iowa, including municipalities that have not enacted a municipal ordinance dealing with similar subject matter.

SECTION 10. REPEALER

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 11. SEVERABILITY CLAUSE

If any section, provision or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of either the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 12. EFFECTIVE DATE

This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law. (All noted Iowa code sections are as amended).

PASSED AND APPROVED this 6th day of February, 2020.

/s/ Ray Peterson, Chairperson, Board of Supervisors

Attest: /s/ Jennifer Garms, Clayton County Auditor

First Reading: February 4, 2020

Second Reading: February 6, 2020

Third Reading: Waived

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