

ORDINANCE NO. 11-2009

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING
CHAPTER 9.21 TO THE ELK GROVE MUNICIPAL CODE ENTITLED
SOCIAL HOST LIABILITY AND PROHIBITION AGAINST UNDERAGE DRINKING**

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority

The City Council does hereby add Chapter 9.21 entitled "Social Host Liability and Prohibition Against Underage Drinking" to the Elk Grove Municipal Code regarding the City's regulation of underage drinking by prohibiting the hosting, permitting, or allowing gatherings where minors are consuming alcoholic beverages. The City Council enacts this ordinance pursuant to the grant of power to cities under the authority of Article XI, section 7 of the California Constitution.

Section 2: Findings

In support of this ordinance, the City Council finds and declares as follows:

WHEREAS, the City of Elk Grove, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws that promote the public health, safety, and general welfare of its residents; and

WHEREAS, parties, gatherings, or events on private property where alcoholic beverages are consumed by minors, who are under the legal age to consume alcohol in the State of California, are harmful to the minors themselves and a threat to public health, safety, quiet enjoyment of residential property, and general welfare; and

WHEREAS, 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 City 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 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 of Elk Grove Police Department has the legal authority to arrest offenders and direct the host to disperse the gathering; and

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

WHEREAS, it is the further intent of the City 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.

NOW, THEREFORE, it is the intent of the City Council in enacting this ordinance to provide for the public health, safety, and welfare by prohibiting against the hosting, permitting, or allowing of gatherings where minors are consuming alcoholic beverages and by affirming and promoting the family atmosphere of the City of Elk Grove.

Section 3: Application

Chapter 9.21 of the Elk Grove Municipal Code is hereby enacted to read as follows:

Chapter 9.21

Social Host Liability and Prohibition Against Underage Drinking

Sections:

- 9.21.002 Title
- 9.21.004 Findings
- 9.21.006 Intent and Purpose
- 9.21.008 Definitions
- 9.21.010 Consumption of Alcohol by Minor Prohibited in Public Place, Place Open to Public, or Place Not Open to Public
- 9.21.012 Hosting, Permitting, Allowing a Party, Gathering or Event where Minors Consume Alcoholic Beverages Prohibited
- 9.21.014 *Prima Facie* Evidence
- 9.21.016 Separate Violations for Each Incident
- 9.21.018 Enforcement Remedies
- 9.21.020 Billing and Collection
- 9.21.022 Special Fund
- 9.21.024 Appeals

9.21.002 Title.

This Chapter shall be known as the "Social Host Liability and Prohibition Against Underage Drinking"

9.21.004 Legislative Findings.

A. Minors often obtain, possess, or consume 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, yet 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.

B. Consumption of alcoholic beverages by minors who are under the legal age to consume alcohol in the State of California is harmful to the minors themselves and poses an immediate threat to the public health, safety and welfare in that it increases alcohol abuse by minors and leads to physical altercations and violent crimes including rape and other sexual offenses, accidental injury, neighborhood vandalism, and excessive noise disturbance, all of which may require intervention by local law enforcement.

C. Law enforcement responses to gatherings involving consumption of alcoholic beverages by minors often require extensive resources to manage the incident. Further, when law enforcement personnel respond to gatherings involving the consumption of alcoholic beverages by minors it takes away valuable resources from other service calls in the community, thereby placing the community at increased risk. Law enforcement, fire and emergency response services are not currently reimbursed for the response costs when called to a property or gathering where minors obtain, possess, or consume alcoholic beverages.

D. The prohibitions found in this Chapter are reasonable and expected to deter the consumption of alcoholic beverages by minors by holding responsible persons who know of, or should know of, the illegal conduct yet fail to stop or prevent it. In addition, the revenue received by the City of Elk Grove after cost reimbursement will be directed toward alcohol abuse and prevention education programs in the community.

9.21.006 Intent and Purpose.

The purposes of this Chapter are:

A. To protect public health, safety and general welfare;

B. To enforce laws prohibiting the service to and consumption of alcoholic beverages by minors; and

C. To reduce the costs of providing law enforcement, fire, and other emergency response services to premises where alcoholic beverages are served to or consumed by a minor, by holding the responsible person, social host and/or landowners responsible for the costs associated with providing law enforcement and other emergency response services.

9.21.008 Definitions.

The definitions contained in this section shall govern the construction of EGMC Chapter 9.21.

A. "Adult" is any person of or over the age of eighteen (18) years.

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

C. "Alcoholic Beverage(s)" includes any liquid or solid material intended to be ingested by a person which contains ethanol, also known as ethyl alcohol, drinking alcohol, or alcohol, including, but not limited to, alcoholic beverages as defined in Section 109 of the California Vehicle Code, intoxicating liquor, malt beverage, beer, wine, spirits, liqueur, whiskey, rum, vodka, cordials, gin, and brandy, and any mixture containing one (1) or more alcoholic beverages. Alcoholic beverage includes a mixture of one (1) or more alcoholic beverages whether found or ingested separately or as a mixture.

D. "Family Gathering" is a gathering where each minor present is supervised by his or her parent or legal guardian.

E. "Gathering" is a party, gathering or event where a group of two (2) or more persons have assembled or are assembling for a social occasion or social activity.

F. "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.

G. "Minor" is any person under the age of twenty-one (21) years.

H. "Juvenile" is any person under the age of eighteen (18) years.

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

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

K. "Response Costs" are the costs associated with response by law enforcement, fire, or other emergency response providers to a gathering, including but not limited to:

1. Salaries and benefits of law enforcement, community enhancement, 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 cost associated with or attributed to such response(s);
2. The cost of any medical treatment for any law enforcement, community enhancement, 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;
4. Any other allowable costs related to enforcement of EGMC Sections 9.21.010 and 9.21.012.

L. "Responsible person" means a person or persons with a right of possession in the premises including, but not limited to:

1. An owner of the residence or other private property, place or premises, including any commercial or business premises;
2. A tenant or lessee of the residence or other private property, place or premises, including any commercial or business premises;
3. The landlord or property manager responsible for the property;
4. The person(s) in charge of the residence or other private property, place or premises, including commercial or business premises; and
5. The person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering.
6. If a responsible person or social host for the party or gathering is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to EGMC Chapter 9.21. To incur liability for response costs imposed by EGMC Chapter 9.21, the responsible person or social host for the gathering must be aware of the gathering, but need not be present at such gathering which results in the imposition of response costs pursuant to EGMC Chapter 9.21.

M. "Social Host" is a person who knowingly hosts, permits, or allows a gathering to take place where one (1) or more minors consume one (1) or more alcoholic beverages, or any portion thereof, on property owned or controlled by the person and the person knows or reasonably should have known that the minor is consuming or has consumed an alcoholic beverage.

9.21.010 Consumption of Alcohol by Minor Prohibited in Public Place, Place Open to Public, or Place Not Open to Public.

Except as permitted by federal or state law, it is unlawful for any minor to consume any alcoholic beverage at any place not open to the public, unless that minor is being supervised by his or her own parent or legal guardian in connection with the consumption of the alcoholic beverages.

9.21.012 Hosting, Permitting, Allowing a Party, Gathering or Event Where Minors Consume Alcoholic Beverages Prohibited.

A. It is unlawful for any persons having control of any premises to knowingly host, permit or allow a gathering to take place at said premises where at least one (1) minor consumes one (1) or more alcoholic beverages, or any portion thereof, whenever the person having control of the premises either knows a minor is or has consumed an alcoholic beverage or reasonably should have known that a minor is or has consumed an alcoholic beverage had the person taken all reasonable steps to prevent the consumption of alcoholic beverages by a minor as set forth in EGMC Section 9.21.012(B).

B. Any person having control of any premises, who knowingly hosts, permits or allows a gathering at said premises shall take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps include, but are not limited to: 1) controlling access to alcoholic beverages at the gathering, 2) controlling the quantity of alcoholic beverages at the gathering, 3) verifying the age of persons attending the gathering by inspecting drivers' licenses or other government-issued identification cards to ensure minors do not consume alcoholic beverages while at the gathering, and 4) supervising the activities of minors at the gathering.

C. 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, as permitted by Article I, section 4 of the California Constitution or if the event is a family gathering.

9.21.014 *Prima Facie* Evidence.

Whenever a responsible person and/or social host having control of the premises is present at the premises at the time that a minor obtains, possesses, or consumes any alcoholic beverage, it shall be *prima facie* evidence that such social host, regardless of age, knew or reasonably should have known, that the minor obtained, possessed, or consumed an alcoholic beverage at the gathering.

9.21.016 Separate Violations for Each Incident.

Each incident in violation of EGMC Sections 9.21.010 and 9.21.012 shall constitute a separate offense.

9.21.018 Enforcement Remedies

This chapter shall be enforced as set forth in EGMC Chapter 1.04.

9.21.020 Billing and Collection

A. The amount of response costs shall be deemed a debt owed to the City of Elk Grove by the reasonable person and/or social host. Any person owing such costs shall be liable in a civil action brought in the name of the City for recovery for such costs, including reasonable attorney fees.

B. Notice of the costs for which the responsible person is liable shall be mailed via first-class mail. The responsible person must remit payment of the noticed response costs to the City of Elk Grove within thirty (30) days of the date of the notice. The payment of any such costs shall be stayed upon the filing of a timely appeal pursuant to EGMC Section 9.21.024. The notice shall contain the following information:

1. The name of the person(s) being held liable for the payment of such costs;
2. The address of the private property or private premises where the gathering occurred;
3. The date and time of the response;
4. The law enforcement, fire, or emergency service provider(s) who responded;
5. An itemized list of the response costs for which the person(s) is being held liable.

C. The failure of any person to pay the penalties assessed by an administrative citation and/or response costs within the time specified on the administrative citation or response cost bill may result in the Chief of Police or his or her authorized designee referring the matter to the Finance Director or other designated agent for collection. The City Attorney, Chief of Police or their designated agent(s) may pursue any other legal remedy to collect the penalties and/or response costs.

9.21.022 Special Fund

A. There is hereby established a special fund for the purposes of receiving and expending civil penalties and response costs collected under EGMC Chapter 9.21. This special fund shall be known and designated as the "Prevention of Underage Drinking Fund."

B. Expenditure of monies. The appropriation of all monies in the Prevention of Underage Drinking Fund shall be made exclusively for the purposes of the prevention of underage drinking within the City of Elk Grove, which shall include the enforcement of, education for, and prevention of underage drinking. Expenditures shall include, but not be limited to, purchase of equipment, consultant services, materials and supplies, or any other expenditure(s) related to the prevention of underage drinking within the City of Elk Grove. The administration of the fund shall conform to the Code and all accounting principles practiced by the City.

C. Accumulation of monies in the fund. The balance remaining in the Prevention of Underage Drinking Fund at the close of a fiscal year shall be deemed to have been provided for a specialized purpose and shall be carried forward and accumulated in said fund for the purposes set forth herein.

9.21.024 Appeals

Any person who receives notice of imposition of response costs as set forth in EGMC Section 9.21.020 may appeal the imposition of these costs pursuant to EGMC Chapter 1.11. Failure to appeal shall constitute a waive of any claims regarding the imposition or collection of these costs and shall also constitute a failure to exhaust administrative remedies.

Section 4: No Mandatory Duty of Care

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council declares that it would have adopted this ordinance irrespective of the invalidity to any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

ORDINANCE: 11-2009
INTRODUCED: May 27, 2009
ADOPTED: June 10, 2009
EFFECTIVE: July 10, 2009



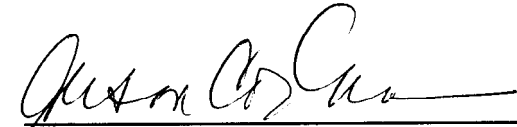
PATRICK HUME, MAYOR of the
CITY OF ELK GROVE

ATTEST:



SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:



SUSAN COCHRAN, CITY ATTORNEY

Dated signed: June 17, 2009

**CERTIFICATION
ELK GROVE CITY COUNCIL ORDINANCE NO. 11-2009**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on May 27, 2009 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on June 10, 2009 by the following vote:

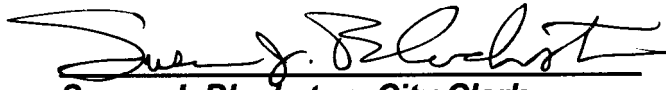
AYES : **COUNCILMEMBERS:** *Hume, Scherman, Cooper, Davis, Detrick*

NOES: **COUNCILMEMBERS:** *None*

ABSTAIN: **COUNCILMEMBERS:** *None*

ABSENT: **COUNCILMEMBERS:** *None*

A summary of the ordinance was published pursuant to GC 36933(c) (1).


**Susan J. Blackston, City Clerk
City of Elk Grove, California**