

CITY OF ANTHONY
ORDINANCE NO. 2016-05

SOCIAL HOST ORDINANCE

WHEREAS: Underage persons often obtain, possess or consume alcoholic beverages at underage or unruly gatherings held at private residences or at rented residential and commercial premises under the control of a person who knows or should know of such conduct but fails to stop it;

WHEREAS: Underage consumption of alcoholic beverages poses an immediate threat to the public health, safety and welfare in that it increases alcohol abuse by underage persons, physical altercations, 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; underage or unruly gatherings with large numbers of underage drinkers and inadequate or no adult supervision are particularly high risk settings for these adverse consequences;

WHEREAS: The New Mexico Department of Health conducts a Youth Risk and Resiliency Survey every two years in middle and high schools across the state, including Doña Ana Public Schools. The survey asks students to report on a variety of risk behavior indicators, including underage alcohol consumption. In 2013, the most recent year for which data is available, high school youth in Doña Ana County surpassed the state averages in several indicators of alcohol consumption and risk, including current (past month) drinking and riding with a drinking driver. Among high school students, 21.3% reported binge drinking (5 or more drinks in a row within a couple of hours) in the past month and 4.3% reported extreme binge drinking (10 or more drinks in a row within a couple of hours). Among students who reported drinking in the past month, 87.4% indicated they had consumed it in a social setting, either at their own home or another person's home.

WHEREAS: Law enforcement responses to disturbances involving underage consumption of alcoholic beverages at underage or unruly gatherings frequently require the use of extensive resources ; further, when law enforcement personnel respond to disturbances at underage or unruly gatherings it limits their ability to respond to other service calls in the community, thereby placing the community at increased risk; law enforcement is not currently reimbursed for their expenses when called to an underage or unruly gathering; providing law enforcement the authority to direct the host to disperse the gathering and to cite the responsible persons will ease the burden on law enforcement personnel to control and deter such gatherings;

WHEREAS: Law enforcement, fire and other emergency response services personnel are required to respond, sometimes on multiple occasions, to underage or unruly gatherings at private residences and other private property at which alcoholic beverages are served to or consumed by underage persons and responses to such gatherings result in a disproportionate expenditure of public safety resources of the City of Anthony, which are underwritten by general municipal taxes paid to the City by its taxpayers and residents and delaying police responses to regular and emergency calls to the rest of the City;

WHEREAS: The prohibitions found in this chapter are reasonable and expected to deter underage persons from obtaining, possessing and consuming alcoholic beverages by holding responsible persons who encourage, are aware of, or should be aware of, the illegal conduct yet fail to prevent it.

I. DEFINITIONS

The terms used in this chapter have the meaning expressly provided herein.

(a) An “**adult**” is any person over the age of twenty-one (21) years.

(b) An “**alcoholic beverage**” 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, intoxicating liquor, malt beverage, beer, wine, spirits, liqueur, whiskey, rum, vodka, cordials, gin, and brandy, and any mixture containing one or more alcoholic beverages. Alcoholic beverage includes a mixture of one or more alcoholic beverages whether found or ingested separately or as a mixture.

(c) A “**controlled substance**” is a drug or substance the possession and use of which is regulated under the federal controlled substances act. Such term does not include any drug or substance for which the individual found to have consumed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription.

(d) A “**family gathering**” is a gathering where each underage person present is directly supervised by his or her parent or legal guardian.

(e) A “**legal guardian**” is a person who is lawfully vested with the power and charged with the duty of taking care of an underage person. (f) An “**underage person**” is any person under the age of twenty-one (21) years. (g) A “**parent**” includes any person who is a natural parent, an adoptive parent, a foster parent, or a step-parent. (h) A “**private residence or other private property**” means a home, yard, apartment, condominium, or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation, including contiguous properties, and/or any buildings, structures or other improvements situated thereon or affixed thereto. (i) A “**reasonable costs**” means the salaries of the responding Police Officers, Fire personnel or other city emergency personnel, at the salary then in effect for each classification of each individual officer or fireman, for the amount of time actually spent in responding to or remaining at the party, or investigating the gathering or event; appropriate overhead; the actual cost of any medical treatment to injured officers; the cost of repairing any damaged City equipment or property, the cost of towed vehicles, the cost of Fire Department vehicle.

response, and the cost of court overtime associated directly with the incident.

(j) A “**responsible person**” means a person or persons with a right of possession in the private residence or other private property on which an underage or unruly gathering is conducted, including, but not limited to:

- i. The person(s) who own, rent, lease or otherwise has direct control of the premises where the underage or unruly gathering occurs;
- ii. A tenant(s) or lessee(s) of the residence or other private property;
- iii. Any other person(s) in charge of the private residence or other private property; and
- iv. The person(s) who organizes or supervises or conducts the event or any other person(s) accepting responsibility for such a gathering.

(k) An “**underage gathering**” means a party or gathering of two or more persons at a private residence or other private property at which alcoholic beverages are being furnished to, consumed by, or in possession of any underage person.

(l) An “**unruly gathering**” means a party or gathering of two or more persons at a private residence or other private property where conduct is occurring that constitutes a substantial disturbance of the quiet enjoyment of private or public property. Such conduct includes but not limited to:

- i. Unlawful consumption of alcohol or alcoholic beverages;
- ii. Use of a controlled substance by any person at the gathering;
- iii. Excessive noise as defined by [relevant local ordinance];
- iv. Excessive traffic that is significantly in excess of the normal amount of pedestrian and vehicle traffic for the zoning district;
- v. Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;
- vi. Assaults, batteries, fights, domestic violence, sexual assault, or other disturbances of the peace;
- vii. Vandalism;
- viii. Litter, or
- ix. Any other conduct which constitutes a threat to the public health, safety, quiet enjoyment of residential property or the general welfare.

An unruly gathering shall constitute a public nuisance.

II. VIOLATIONS

(a) It shall be a petty misdemeanor for any responsible person to conduct, aid, allow, permit, or condone an underage or unruly gathering, at any private residence, other private property, public place, or any place open to the public.

(b) This section shall not apply to conduct involving the serving of alcoholic beverages that occurs exclusively between an underage person and his or her parent or legal guardian, as permitted by New Mexico state statute, 60-7B-1, NMSA 1978. [DRAFT 04/16/2016]

III. MANDATORY PENALTIES

- (a) First violation: \$250.00 fine.
- (b) Second offense within twelve (12) months: \$500.00 fine.
- (c) Third and any subsequent offense within twelve (12) months: \$500.00 and/or 90 days jail.

IV. RECOVERY OF RESPONSE COSTS

- (a) When the police department, fire department and/or other city emergency responder responds to a Social Host Ordinance violation with a given address in the city, the responsible persons in direct control of those premises remains responsible for, jointly and severally liable for the city's reasonable costs for that response.
- (b) These costs are wholly separate from any other penalties imposed for a violation of this Section. The City may pursue to recover these costs under a separate action as permitted by law.

V. SEVERABILITY


If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this title.

PASSED, APPROVED, AND ADOPTED THIS 4TH DAY OF JANUARY 2017.



 Diana Murillo-Trujillo, Mayor

ATTEST:



 Velma Navarrete, City Clerk

Roll Call vote:

Trustee Fernie Herrera	YES	NO
Trustee Gloria Gameros	YES	NO
Mayor Pro Tem Erica Ramos	YES	NO
Trustee Betty Gonzalez	YES	NO