

THIRD AND FINAL READING AND ACTION ON ORDINANCE

WHEREAS – proposed the adoption and enactment of a certain Ordinance on the 20th day of October, 2009, which action is recorded in the Minutes of the Board of Supervisors; and

WHEREAS the same was first previously read and passed by a vote of a majority of the Board of Supervisors on October 6, 2009, which action is recorded in the Minutes of the Board of Supervisors;

WHEREAS the same was previously read and passed for the second time by a vote of a majority of the Board of Supervisors on October 13, 2009, which action is recorded in the Minutes of the Board of Supervisors;

NOW THEREFORE the following was read and voted upon for the third time by the Board of Supervisors, and is (passed) by a vote of a majority of the Board of Supervisors:

AND IT IS NOW THEREFORE ENACTED AND ORDAINED:

Ordinance # 34 **Social Host and Minor Consumption Ordinance**

Section 1. Purpose

The Supervisors of Winnebago County intend to protect the interest, welfare, health, and safety within Winnebago County by prohibiting the services to and consumption of alcoholic beverages by persons under the age of twenty-one (21) at premises located in the County. The County Supervisors find that the occurrence of social gatherings at premises where alcoholic beverages are served to or consumed by persons under the age of twenty-one (21) is harmful to such persons themselves and a threat to public welfare, health, and safety. The County Supervisors further finds that persons under the age of twenty-one (21) often obtain alcoholic beverages at such gatherings and that persons who are in control of such premises know or have reason to know of such service and/or consumption and will be more likely to ensure that alcoholic beverages are neither served nor consumed by persons under the age of twenty-one (21) at these gatherings. Based on these findings, the County Supervisors have deemed it necessary to enact the following regulations in Winnebago County.

Section 2. Definitions. For purposes of this ordinance, the following terms have the following meanings:

- a. Alcohol. “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 produced.
- b. Alcoholic beverage. “Alcoholic beverage” means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- c. Emergency Responders. “Emergency Responders” means firefighters, law enforcement officers, emergency medical service personnel, and other personnel having emergency response duties.

- d. Enforcement Services. "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.
 - e. Event. Gathering. Party. "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.
 - f. Juvenile. "Juvenile" means a person under the age of eighteen (18).
 - g. Legal Age. "Legal age" means twenty-one (21) years of age or more.
 - h. Parent. "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; (3) as a person to whom legal custody has been given by order of the court.
 - i. Person. "Person" means any individual, partnership, corporation, or any association of one or more individuals.
 - j. Possession or Control. "Possession or control" means actual possession or constructive possession based on facts, which permit the inference of intent to possess or control alcoholic beverages.
 - k. Premises. "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/RV, 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.
 - l. Public place. "Public place" means the same as defined in Iowa Code section 123.3(27).
 - m. Social Host. "Social host" means any person (see Section 1(i) who aids, allows, entertains, organizes, supervises, controls or permits an event, gathering, or party. This includes, but is not limited to: (1) the person(s) 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.
- This ordinance does not apply to a social host who is a juvenile, however if the social host is a juvenile and the parent(s) of the juvenile knows or reasonably should know of the event, gathering, or party and knows or reasonably should know that the consumption of alcohol is occurring, the parent(s) shall be liable for violations of the Ordinance.
- n. Underage person. "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 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. Controlling the quantity of alcoholic beverages,
- c. Verifying the age of persons being served, in the possession of, or consuming alcoholic beverages at the event, gathering, or party by inspecting drivers' licenses or other government-issued identification cards,
- d. Supervising the activities of underage persons at the party, and
- e. Notifying law enforcement of underage possession or consumption of alcoholic beverages, and allowing law enforcement to enter the premises for the purpose of stopping the possession or consumption by underage persons.

Section 4. Prohibitions

- a. 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 alcoholic beverages, or knowingly permit or allow underage persons to possess alcoholic beverages on the premises, whether or not the social host is present on the premises.
- b. A person or persons under the legal age shall not purchase or attempt to purchase, or individually or jointly have alcoholic liquor, wine, or beer in their possession or control. (As set out in Iowa Code section 123.47(2)). A person under the legal age who has consumed alcoholic liquor, wine, or beer shall be presumed to have had the same in his or her possession or control prior to its consumption.

A social host has an affirmative defense if the social host took reasonable steps to prevent the possession or consumption of alcohol, or notified law enforcement and allowed law enforcement to enter the premises for the purpose of stopping illegal activities.

Section 5. Exceptions

- a. This ordinance shall not apply:
 1. Conduct solely between an underage person and his or her parents while present in the parents' household,
 2. Legally protected religious observances, or
 3. Situations where underage persons are lawfully in possession of alcoholic beverages during the course and scope of employment.
- b. The exceptions outlined in Section 5(a) shall not apply under circumstances in which the underage person leaves the home, religious gathering, or place of employment and subsequently violates Iowa Code section 123.46(2), **Consumption or intoxication in public places.**

Section 6. Enforcement

The provisions of this Ordinance shall be enforced by the Winnebago County Sheriff's Department. The Winnebago County Sheriff's Department shall have primary but not exclusive enforcement responsibility for this Ordinance.

Section 7. Penalties

- a. Violations of Section 4(a) are declared to be county infractions, punishable by civil penalty. A seven hundred and fifty dollar (\$750.00) civil penalty shall be imposed for a social host's first offense. A one thousand dollar (\$1,000.00) civil penalty shall be imposed for a social host's second or subsequent offense. The County may also seek reimbursement for enforcement services provided by emergency responders related to the event, gathering, or party.
- b. A person who violates Section 4(b) commits the following:
 1. A simple misdemeanor, a scheduled violation under Iowa Code section 805.8, punishable by a fine of not more than two hundred fifty dollars (\$250.00) of the first offense.
 2. A second offense shall be a simple misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00). In addition to any other applicable penalty, a person in violation of Section 4(b) shall choose between either completing a substance abuse evaluation or the suspension of the person's motor vehicle operating privileges for a period not to exceed one year. (As set out in Iowa Code section 123.47(3)(a)(2)).
 3. A third or subsequent offense shall be a simple misdemeanor punishable by a fine of not more than five hundred dollars (\$500.00) and the suspension of

the person's motor vehicle operating privileges for a period not to exceed one year. (As set out in Iowa Code section 123.47(3)(a)(3)).

4. The court may, in its discretion, order the person who is under the legal age to perform community service work under Iowa Code section 909.3A, of an equivalent value to the fine imposed under this section. (As set out in Iowa Code section 123.47(3)(b)).
5. In determining if a violation charged is a second or subsequent offense, conviction for violation of this section, Iowa Code section 123.47, or an ordinance of any city or county in the state of Iowa that substantially corresponds to this section or Iowa Code section 123.47, shall be counted as previous offenses.

Section 8. Jurisdiction

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

Section 9. Effective Date

This ordinance shall be in full force and in effect from and after its passage, adoption, and publication as required by law.

THOSE VOTING FOR PASSAGE: Wubben, Stensrud, and Oulman

THOSE VOTING AGAINST PASSAGE:

_____(Signed)_____
Chairperson, Board of Supervisors

ATTEST: _____
Winnebago County Auditor

DATE: October 20, 2009