

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND ARTICLE VII OFFENSES, SECTION 74-336. DEFINITIONS, SECTION 74-337, EXEMPTIONS, SECTION 74-338, PRESENCE OF MINORS AND SECTION 74-341. DEFINITIONS OF CHAPTER 74 OFFENSES OF THE CODE OF THE CITY OF BIRMINGHAM AND TO ADD SECTION 74-339 CONTROL AND ALLOWANCE OF PARTY, SECTION 74-340 ATTENDANCE BY PERSON LESS THAN 21 YEARS OF AGE, SECTION 74-342 PROHIBITED ACTIONS, SECTION 74-343 EXCEPTIONS, SECTION 74-344 PENALTY FOR VIOLATION OF SECTION 74-342, SECTION 74-345 REBUTTABLE PRESUMPTION, SECTION 74-346 SELLING OR FURNISHING ALCOHOLIC BEVERAGES TO MINORS AND SECTION 74-347 ADDITIONAL CRIMINAL PENALTY.

THE CITY OF BIRMINGHAM ORDAINS:

Sections 74-336, 74-337 and 74-338 of Chapter 74, Offenses, and Division 5. Controlled Substances, Subdivision III. Open House Parties and Section 74-341, Definitions of Chapter 74, Offenses, Division 5. Controlled Substances, Subdivision IV. Host Parties of the Birmingham City Code are hereby amended to read as follows:

Division 5. Controlled Substances

Subdivision III. Open House Parties

Sec. 74- 336. Definitions

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Allow* means to give permission for, or approval of, possession or consumption of an alcoholic liquor or a controlled substance, by any of the following means:**

- (1) In writing.
- (2) By one or more statements.
- (3) By any form or conduct, including a failure to take corrective action, that would cause a reasonable person to believe that permission or approval has been given.

***Corrective action* means any of the following:**

- (1) **Making a prompt demand that the minor or other individual depart from the premises, residence, or other real property, or refrain from the unlawful possession or consumption of the alcoholic beverage or controlled substance on or within that premises, residence, or other real property and taking additional action described in subsection (2) or (3) if the minor or other individual does not comply with the request.**
- (2) **Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to a law enforcement agency having jurisdiction over the violation.**
- (3) **Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to another person having a greater degree of authority or control over the conduct of persons on or within the premises, residence or other real property.**

Alcoholic liquor means any beverage containing more than one-half of one percent of alcohol by volume, which are fit for beverage purposes, as defined and classified by the Liquor Control Commission.

Control means any form of regulation or dominion, or the authority to regulate, direct, superintend or govern or the authority to exercise restraining or dominating influence over, including a possessory right over property.

Controlled substance means any drug, substance or immediate precursor designated and listed in schedules 1-5 of sections 7201 to 7231 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.7201 et seq., MSA 14.15(7201) et seq.)

House party means a social gathering at a residence that includes at least one person who is not an owner, tenant or regular legal occupant of the residence.

Minor means a person less than 21 years of age.

Open house party means a social gathering of persons at a residence, other than the owner or those with rights of possession of their immediate family members.

Premises means a permanent or temporary place of assembly other than residence, including, but not limited to, any of the following:

- (1) A meeting hall, meeting room or conference room.
- (2) A public or private park.

Residence means a permanent or temporary place of dwelling, including, but not limited to, any of the following:

- (1) A house, apartment, condominium or mobile home and the land around the dwelling to the extent the land is subject to the control of the same person having control of the dwelling unit.
- (2) A cottage, cabin, trailer or tent.
- (3) A motel unit, hotel unit, or bed and breakfast unit.

Sec. 74-337. Purpose.

The City determines that alcohol and controlled substance use by persons less than 21 years of age should be regulated. Unregulated use creates serious social problems, including but not limited to injury and harm to persons and property caused by vehicles operated by persons less than 21 years of age under the influence of alcohol or controlled substances, disturbance of the peace, and other devastating effects upon minors and the public at large. It is further determined that the regulation of house parties, involving alcohol and controlled substance use by persons less than 21 years of age, requires sponsoring persons to assume responsibility. Prohibiting persons less than 21 years of age from attending such parties, will significantly reduce the incidence of problems attributable to alcohol and controlled substance use by persons less than 21 years of age.

Sec. 74-338. Exemptions.

The provisions of this subdivision shall not apply to legally protected religious observances or legally protected educational activities.

Sec. 74-339. Control and allowance of party.

It shall be unlawful for any person having control of any residence, to allow a house party to take place or to continue once it has begun at that residence or fail to take corrective action, when the person knows or reasonably should know an alcoholic liquor or controlled substance is being or has been possessed or consumed at the house party by a person less than 21 years of age.

Sec. 74-340 Attendance by person less than 21 years of age.

It shall be unlawful for any person less than 21 years of age to attend a house party while having knowledge that alcohol or controlled substances are being sold, offered for sale or dispensed to or are being possessed by persons less than 21 years of age.

Subdivision IV. Host Parties

Sec. 74-341. Definitions

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

***Allow* means to give permission for, or approval of, possession or consumption of an alcoholic beverage or a controlled substance, by any of the following means:**

- (1) In writing.
- (2) By one or more statements.
- (3) By any form or conduct, including a failure to take corrective action, that would cause a reasonable person to believe that permission or approval has been given.

***Corrective action* means any of the following:**

- (1) Making a prompt demand that the minor or other individual depart from the premises, residence, or other real property, or refrain from the unlawful possession or consumption of the alcoholic beverage or controlled substance on or within that

premises, residence, or other real property and taking additional action described in subsection (2) or (3) if the minor or other individual does not comply with the request.

- (2) Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to a law enforcement agency having jurisdiction over the violation.**
- (3) Making a prompt report of the unlawful possession or consumption of alcoholic liquor or a controlled substance to another person having a greater degree of authority or control over the conduct of persons on or within the premises, residence or other real property.**

Alcoholic liquor means any beverage containing more than one-half of one percent of alcohol by volume, which are fit for beverage purposes, as defined and classified by the Liquor Control Commission.

Control means any form of regulation or dominion, or the authority to regulate, direct, superintend or govern or the authority to exercise restraining or dominating influence over, including a possessory right over property.

Controlled substance means any drug, substance or immediate precursor designated and listed in schedules 1-5 of sections 7201 to 7231 of the Public Health Code, Public Act No. 368 of 1978 (MCL 333.7201 et seq., MSA 14.15(7201) et seq.)

House party means a social gathering at a residence that includes at least one person who is not an owner, tenant or regular legal occupant of the residence.

Host Party means a social gathering at a residence or upon premises as defined within this ordinance that includes at least one person who is not an owner, tenant or regular legal occupant.

Minor means a person less than 21 years of age.

Premises means a permanent or temporary place of assembly other than residence, including, but not limited to, any of the following:

- (1) A meeting hall, meeting room or conference room.
- (2) A public or private park.

Residence means a permanent or temporary place of dwelling, including, but not limited to, any of the following:

- (1) A house, apartment, condominium or mobile home and the land around the dwelling to the extent the land is subject to the control of the same person having control of the dwelling unit.
- (2) A cottage, cabin, trailer or tent.
- (3) A motel unit, hotel unit, or bed and breakfast unit.

Social gathering means an assembly of two or more individuals for any purpose, unless all of the individuals attending the assembly are members of the same household or immediate family.

Sec. 74-342. Prohibited actions.

Except as otherwise provided in section 74-343, an owner, tenant, or other person having control over any premises, residence, or other real property shall not do either of the following:

- (1) Knowingly allow a minor to consume or possess an alcoholic beverage at a social gathering on or within that premises, residence, or other real property.
- (2) Knowingly allow any individual to consume or possess a controlled substance at a social gathering on or within that premises, residence, or other real property.

Sec. 74-343. Exceptions.

This section does not apply to the use, consumption or possession of a controlled substance by an individual pursuant to a lawful prescription, or to the use, consumption, or possession of an alcoholic beverage by a minor for religious purposes.

Sec. 74-344. Penalty for violation of section 74-342.

(a) Except as provided in subsection (b) of this section, a person who violates section 74-342 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or by a fine of not more than \$500.00, or both.

Sec. 74-345. Rebuttable presumption.

Evidence of all of the following gives rise to a rebuttable presumption that the defendant allowed the consumption or possession of an alcoholic beverage or a controlled substance on or within a premises, residence, or other real property, in violation of this section:

- (1) The defendant had control over the premises, residence, or other real property.
- (2) The defendant knew that a minor was consuming or in possession of an alcoholic beverage or knew that an individual was consuming or in possession of a controlled substance at a social gathering on or within that premises, residence, or other real property.
- (3) The defendant failed to take corrective action.

Sec. 74-346. Selling or furnishing alcoholic beverages to minors.

This section does not authorize selling or furnishing an alcoholic beverage to a minor.

Sec. 74-347. Additional criminal penalty.

A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.