

AN ORDINANCE TO ESTABLISH THE CRIME OF HOSTING AND ALLOWING AN EVENT OR GATHERING WHERE ALCOHOL IS PRESENT AND BEING POSSESSED OR CONSUMED BY PERSONS UNDER 21 YEARS OF AGE

The Wilkin County Board of Commissioners does ordain:

Section 1. Title. This ordinance shall be known as the "Social Host Ordinance."

Section 2. Purpose and Findings. The County Board intends to discourage under age possession and consumption of alcohol, even if done within the confines of a private residence, and intends to impose criminal penalties on those person(s) who host events or gatherings where persons under 21 years of age possess or consume alcohol regardless of whether the person(s) hosting or allowing the event or gathering supplied the alcohol.

The County Board finds that:

- a. Alcohol is an addictive drug which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of the irresponsible user.
- b. Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of 21 are harmful to those persons and constitute a potential threat to public health, safety and welfare requiring prevention or abatement.
- c. Prohibiting underage consumption protects underage persons, and the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.
- d. Events or gatherings involving underage possession and consumption often occur outside the presence of parents or other responsible adults. However, there are occasions when the parent(s) or other adult(s) is/are present and condone the activity, and, in some circumstances, provide the alcohol.
- e. Even though giving or furnishing alcohol to an underage person is a crime, it is difficult to prove; therefore, an ordinance is necessary to help further combat underage consumption.
- f. A deterrent effect will be created by holding person(s) criminally responsible for hosting or allowing an event or gathering where underage possession of consumption of alcohol occurs.

Section 3. Definitions. For the purpose of this Ordinance, the following terms shall have the meanings stated:

- a. Alcohol means ethyl alcohol, hydrated oxide of ethyl or spirits of wine, liqueur, cordials, whiskey, rum, brandy, gin, or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.
- b. Alcohol 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. Adult means any person eighteen (18) years of age or older.
- d. Underage Person means any person under the age of twenty-one (21) years.
- e. Parent means any person having legal custody of a juvenile as a natural parent, adoptive parent, step parents, legal guardian, or a person to whom legal custody has been given by order of the court.
- f. Host or Allow means to aid, conduct, entertain, organize, supervise, control or permit an event or gathering.
- g. Event or Gathering means any group of three or more persons assembled or gathering together for a social occasion or other activity.
- h. Person means any individual, partnership, co-partnership, corporation, or any association of one (1) or more individuals. A person does not include any city, county, or state agency.
- i. Person Having Control means any individual, partnership, co-partnership, corporation, or any association of one (1) or more individuals or other legal person with a right of possession to the premises on which the event or gathering takes place, including, but not limited to:
 - 1. An owner of the residence or other private property;
 - 2. A tenant or lessee of the residence or other private property; or
 - 3. The person(s) who organizes, supervises, officiates, conducts or controls the event or gathering, or any person(s) accepting responsibility for the event or gathering.
- j. Residence, Premises, or Public Property or Private Property means any location, including a house, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, yard, field, park, or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied

as a dwelling or residence or specifically for a social or business function, and whether owned, leased, rented or used with or without permission or compensation.

- k. Take Reasonable Steps means to control access to and the quantity of alcoholic beverages present at the event or gathering and to verify the age of persons attending the event or gathering by inspecting the driver's licenses or other government-issued identification cards of those present to ensure that underage person(s) do not possess or consume alcohol or alcoholic beverages while at the event or gathering and to supervise the activities of underage person(s) at the event or gathering.

Section 4. Prohibited Acts and Penalty for Violation of Ordinance.

- A. Prohibited Acts. It is unlawful for any person(s) to host or allow an event or gathering at any residence, premises, or on any other public property or private property where alcohol or alcoholic beverages are present when the person hosting or allowing the event or gathering knows or reasonably should know that an underage person will or does:
 - a. consume alcohol or an alcoholic beverage; or
 - b. possess alcohol or an alcoholic beverage with the intent to consume it; andthe person, hosting or allowing the event or gathering, fails to take reasonable steps to prevent such possession or consumption by the underage person(s).
- B. It is unlawful for a person to violate Section 4A if the person intentionally aids, advises, hires, counsels, or conspires with another or otherwise procures another to commit the prohibited act.
- C. A person who hosts or allows an event or gathering does not have to be present at the event or gathering to be criminally responsible for a violation of Section 4A.
- D. Evidence. Whenever a person, having control of the premises, is present at the time when one (1) underage person obtains, possesses, or consumes any alcoholic beverage, it shall be prima facie evidence that the person, regardless of age, knew or reasonably should have known, that the underage person obtained, possessed, or consumed an alcoholic beverage at the event or gathering.

It is prima facie evidence of a violation of this ordinance when at least one (1) person under the age of twenty-one (21) years is present, and the person under the age of 21 years has consumed alcohol or is under the influence of alcohol or is in possession of a container of alcoholic beverages, and a container of alcoholic beverage is present.

The following may be considered in determining prima facie evidence that a person has violated this ordinance:

- a. An advertisement or promotion of the event or gathering via invitations, flyers, handbills, posters or postings on social networks (e.g., MySpace, Facebook, Twitter, etc.), blogs, user-generated videos (e.g., YouTube, Viddler, etc.), or mobile phone texting;
- b. An advertisement or promotion of the event or gathering and invitation to "Bring Your Own Bottle" (a.k.a. "B.Y.O.B."), via invitations, flyers, handbills, posters or postings on social networks (e.g., MySpace, Facebook, Twitter, etc.), blogs, user-generated videos (e.g., YouTube, Viddler, etc), or mobile phone texting;
- c. An admission, cover, or other door fees to attend the event or gathering;
- d. Evidence of sales of alcohol or alcoholic beverages (such evidence may include, but is not limited to, money, wristbands or other devices which represent admission, cover, or other door fees to attend the event or gathering, or alcohol or alcoholic beverage fees);
- e. Evidence of the physical presence of alcohol or alcoholic beverages in the residence, premises, public property, or private property (such evidence may include, but is not limited to, the odor of alcohol, or to the containers for consuming and holding alcohol or alcoholic beverages like cups, cans, bottles, beer bong, funnels, kegs, pony kegs, party pigs, punch bowls, party balls, or pitchers); or
- f. The presence of one (1) person under the age of 21 years who manifested any of the characteristics commonly associated with alcohol intoxication or impairment (such evidence may include, but is not limited to, having measurable alcohol concentration on a portable breath testing device generally accepted in the scientific community for measuring alcohol concentration).

Evidence of alcoholic beverage consumption could be obtained by use of a portable breathalyzer test.

E. Penalty. A violation of this Ordinance is a misdemeanor.

Section 5. Exceptions.

- A. This Ordinance does not apply to conduct of an underage person specifically authorized by his or her parent while present in the parent's household.
- B. This Ordinance does not apply to legally protected religious observances.

- C. This Ordinance does not apply to retail intoxicating liquor or 3.2 percent malt liquor licensees, municipal liquor stores, or bottle club permit holders who are regulated by Minnesota Statutes Section 340A.503.
- D. This Ordinance does not apply to law enforcement activities supervised by a law enforcement agency.
- E. This Ordinance does not apply to situations where underage persons are lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment.

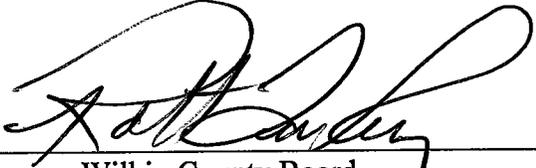
Section 6. Authority. Pursuant to Minnesota Statutes Section 145A.05, Subd. 1, The County Board has the authority to enact laws which promote the public health, safety, and general welfare of its residents.

Section 7. Severability. If any section, subsection, sentence, clause, part, provision, phrase, work, or other portion of this Ordinance is, for any reason, held to be unconstitutional or invalid, in whole or in part by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this chapter, which remaining portions shall continue in full force and effect.

Section 8. Effective Date. This Ordinance shall take effect and be in force thirty (30) days following its passage, approval and publication.

WILKIN COUNTY BOARD OF COMMISSIONERS

By: _____


Chairman, Wilkin County Board

Adopted January 19, 2010.

ATTEST:



Wilkin County Auditor