

LOCAL LAW NO. "E" FOR 2008

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING THE SERVICE TO AND CONSUMPTION OF ALCOHOLIC BEVERAGES AND/OR DRUGS BY PERSONS UNDER THE AGE OF TWENTY-ONE AT PREMISES LOCATED IN ALBANY COUNTY

Introduced: 3/10/08

By Messrs. Higgins, Nichols, Clenahan, Beston, Hoblock, Infante, Ms. Lockart, Messrs. Morse, Rahm, Steck, Aylward, Bullock, Ms. Chapman, Messrs. Clay, Commisso, Ms. Connolly, Messrs. Cotrofeld, Dawson, Domalewicz, Ethier, Gordon, Horstmyer, Houghtaling, Joyce, Ms. Maffia-Tobler, Messrs. Mayo, McCoy, Ms. McKnight, Messrs. Reilly, Scavo, Timmins, Ward and Ms. Willingham:

BE IT ENACTED, by the Legislature of the County of Albany as follows:

SECTION 1. LEGISLATIVE INTENT.

The purpose of this Local Law is to protect the public interest, welfare, health and safety within the County of Albany by prohibiting the service to and consumption of alcoholic beverages and drugs by persons under the age of twenty-one (21) at premises located in Albany County. Although the New York State Legislature has acted to proscribe the unlawful giving, selling, and possessing of alcohol in relation to minors, it has not regulated the situation where a person over the age of eighteen (18) knowingly permits the consumption of alcohol by a minor in his or her home. The Albany County Legislature finds that the occurrence of social gatherings at premises where alcoholic beverages or drugs 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 Albany County Legislature further finds that persons under the age of twenty-one (21) often obtain alcoholic beverages or drugs 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. This Local Law will serve to deter the consumption of alcoholic beverages and drugs by minors by holding those over the age of eighteen responsible when they permit the consumption of alcoholic beverages and/or drugs by minors at premises under their control.

SECTION 2. DEFINITIONS.

Whenever used in this Local Law, unless a different meaning is stated in a definition applicable to only a portion of this Local Law, the following terms will be defined and shall have meanings set forth below:

ALCOHOLIC BEVERAGE: Any liquor, wine, beer, spirits, cider or other liquid or solid, patented or not, composed of or containing alcohol or spirits, whether

or not brewed, fermented or distilled, and capable of being consumed by a person; except that confectionary containing alcohol as provided in Subsection 12 or 200 Agriculture and Markets Law shall not be considered alcoholic beverages within the meaning of this section.

CONTROL: The authority and ability to regulate, direct or dominate.

DRUG: Includes any substance listed in Section 3306 of the Public Health Law.

KNOWINGLY: Shall have the same definition and meaning as that contained in New York State Penal Law Section 15.05.

MINOR: Any person under the age of twenty-one (21).

OPEN HOUSE PARTY: A social gathering at a premises or other private or public property with minors present.

PERSON: A human being and where appropriate, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

PREMISES: Any home, apartment, condominium, co-operative unit or other dwelling unit of any kind and public or private property, including yards and open areas adjacent thereto.

SECTION 3. PROHIBITION.

No person having control of any premises shall knowingly host, suffer, permit, organize or allow an open house party to take place at said premises where three (3) or more minors are present and any alcoholic beverage or drug is being unlawfully possessed, served to or consumed by a minor at said premises.

SECTION 4. EXCEPTIONS.

The provisions of this Local Law shall not apply to:

(A) The possession or consumption of an alcoholic beverage by persons lawfully permitted to do so pursuant to Section 65-c of the New York State Alcohol Beverage Control Law, or any other applicable law; or

(B) The possession or consumption of a drug for which the individual has a current, valid prescription or is otherwise permitted by any other applicable law; or

(C) Any open house party in any municipality in Albany County which has in place a local law, ordinance or regulation prohibiting the service

to and consumption of alcoholic beverages and/or drugs by persons under the age of twenty-one at a premises.

SECTION 5. PREEMPTION.

- (A) If any part or provision of this Local Law is inconsistent with any Federal or State statute, law, rule or regulation, then such statute, law, rule or regulation shall prevail.
- (B) If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances.

SECTION 6. REVERSE PREEMPTION.

This Local Law shall be null and void on the day that Statewide or Federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this Local Law, or in the event that a pertinent State or Federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The Albany County Legislature may determine via resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

SECTION 7. PENALTIES.

Failure to comply with Section 3. above shall constitute a violation, punishable by a fine which shall not exceed five hundred dollars (\$500.00), or imprisonment not exceeding fifteen (15) days or a combination of such fine and imprisonment as shall be fixed by the court.

SECTION 8. EFFECT ON OTHER LAWS.

The provision of Section 3. of this Local Law, shall not in any way affect the application of any other law, where appropriate, including, but not limited to, New York Penal Law Section 260.10, Endangering the Welfare of a Minor, and Section 260.20(2), Unlawfully Dealing with a Child.

SECTION 9. EFFECTIVE DATE.

This Local Law shall take effect immediately.

Referred to Law Committee. 3/10/08

Favorable recommendation – Law Committee. 7/28/08

On roll call vote the following voted in favor: Mr. Aylward, Ms. Benedict, Messrs. Beston, Bullock, Ms. Chapman, Messrs. Clay, Clenahan, Clouse, Commisso, Cotrofeld, Dawson, Domalewicz, Ethier, Gordon, Higgins, Hoblock, Houghtaling, Infante, Joyce, Mss. Lockart, Maffia-Tobler, Messrs. Mayo, McCoy, Ms. McKnight, Messrs. Mendick, Morse, Nichols, Rahm, Reilly, Scavo, Steck, Timmins, Tunny, Ward, Ms. Willingham and Mr. Zeilman – 36.

Those opposed: 0.

Local Law was adopted. 8/11/08