

ORDINANCE NO. 547

AN ORDINANCE MAKING IT ILLEGAL FOR PERSONS UNDER THE AGE OF TWENTY-ONE YEARS, TO CONSUME OR POSSESS ALCOHOLIC BEVERAGES IN THE CITY OF LAS ANIMAS.

WHEREAS, the City Council of the City of Las Animas has determined that it needs to protect its young people from the perils of consuming alcohol; and

WHEREAS, Section 18-13-122(8), C.R.S., provides that a statutory municipality may enact legislation prohibiting persons under twenty-one years of age from possessing and consuming ethyl alcohol; and

WHEREAS, the Las Animas City Council has determined that it is in the best interests of the citizens of the City of Las Animas that an ordinance be enacted to make it illegal for persons under the age of twenty-one years to possess or consume alcoholic beverages.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAS ANIMAS, COLORADO, that:

1. Any person under twenty-one years of age who possesses or consumes ethyl alcohol anywhere in the City of Las Animas, commits illegal possession or consumption of ethyl alcohol by an underage person. Illegal possession or consumption of ethyl alcohol by an underage person is a strict liability offense.

2. It shall be an affirmative defense to the offense described in subsection (1) of this section that the ethyl alcohol was possessed or consumed by a person under twenty-one years of age under the following circumstances:

(a) While such person was legally upon private property with the knowledge and consent of the owner or legal possessor of such private property and the ethyl alcohol was possessed or consumed with the consent of his parent or legal guardian who was present during such possession or consumption; or

(b) When the existence of ethyl alcohol in a person's body was due solely to the ingestion of a confectionery which contained ethyl alcohol within the limits prescribed by section 25-5-410 (1) (i) (II), C.R.S., or the ingestion of any substance which was manufactured, designed, or intended primarily for a purpose other than oral human ingestion, or the ingestion of any substance which was manufactured, designed, or intended solely for medicinal or hygienic purposes, or solely from the ingestion of a beverage which contained less than one-half of one percent of ethyl alcohol by weight.

3. The possession or consumption of ethyl alcohol shall not constitute a violation of this section if such possession or consumption takes place for religious purposes protected by the first amendment to the United States constitution.

4. Prima facie evidence of a violation of subsection (1) of this section shall consist of:

(a) Evidence that the defendant was under the age of twenty-one years and possessed or consumed ethyl alcohol anywhere in this state; or

(b) Evidence that the defendant was under the age of twenty-one years and manifested any of the characteristics commonly associated with ethyl alcohol intoxication or impairment while present anywhere in the City of Las Animas.

5. During any trial for a violation of subsection (1) of this section, any bottle, can, or any other container with labeling indicating the contents of such bottle, can, or container shall be admissible into evidence, and the the information contained on any label on such bottle, can, or other container shall be admissible into evidence and shall not constitute hearsay. A jury or a judge, whichever is appropriate, may consider the information upon such label in determining whether the contents of the bottle, can, or other container were composed in whole or in part of ethyl alcohol. A label which identifies the contents of any bottle, can, or other container as "beer," "ale," "malt beverage," "fermented malt beverage," "malt liquor," "wine," "champagne," "whiskey," or "whisky," "gin," "vodka," "tequila," "schnapps," "brandy," "cognac," "liqueur," "cordial," "alcohol," or "liquor" shall constitute prima facie evidence that the contents of the bottle, can or other container was composed in whole or in part of ethyl alcohol.

6. A parent or legal guardian of a person under twenty-one years of age or any natural person who has the permission of such parent or legal guardian, may give, or permit the possession and consumption of ethyl alcohol to or by a person under the age of twenty-one years under the conditions described in paragraph (a) of subsection (2) of this section. This subsection (6) shall not be construed to permit any establishment which is or is required to be licensed pursuant to article 46, 47, or 48 of title 12, C.R.S., or any members, employees, or occupants of any such establishment to give, provide, make available, or sell ethyl alcohol to a person under twenty-one years of age.

7. Upon the expiration of one year from the date of a conviction for a violation of subsection (1) of this section, any person convicted of such violation may petition the court in which the conviction was entered for an order sealing the record of such conviction. The court shall grant such petition if the petitioner has not been arrested for, charged with, or convicted of any felony,

misdemeanor, or petty offense during the period of one year following the date of such petitioner's conviction for a violation of subsection (1) of this section.

8. The qualitative result of an alcohol test or tests shall be admissible at any trial of any person charged with a violation of subsection (1) of this section upon a showing that the device or devices used to conduct such test or tests have been approved as accurate in detecting alcohol by the executive director of the department of health.

9. Official records of the department of health relating to the certification of breath test instruments, certification of operators and operator instructors of breath test instruments, certification of standard solutions, and certification of laboratories shall be official records of the state. Copies of such records, attested by the executive director of the department of health or his deputy and accompanied by a certificate bearing the official seal for said department, which state that the executive director of the department has custody of such records, shall be admissible in Las Animas Municipal Court and shall constitute prima facie evidence of the information contained in such records. The official seal of the department described in this subsection (9) may consist of a rubber stamp producing a facsimile of the seal stamped upon the document.

10. In any judicial proceeding in Las Animas Municipal Court concerning a charge under subsection (1) of this section, the court shall take judicial notice of methods of testing a person's blood, breath, saliva, or urine for the presence of alcohol and of the design and operation of devices certified by the department of health for testing a person's blood, breath, saliva, or urine for the presence of alcohol. This subsection (10) shall not prevent the necessity of establishing during a trial that the testing devices were working properly and that such testing devices were properly operated. Nothing in this subsection (10) shall preclude a defendant from offering evidence concerning the accuracy of testing devices.

11. No law enforcement officer shall enter upon any private property to investigate any violation of this section without probable cause.

12. Definitions: As used in this section, the following definitions shall apply:

(a) "Establishment" means a business, firm, enterprise, service or fraternal organization, club, institution, entity, group, or residence, and any real property, including buildings and improvements, connected therewith, and shall also include any members, employees, and occupants associated therewith.

(b) "Ethyl alcohol" means any substance which is or contains ethyl alcohol.

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(c) "Possession of ethyl alcohol" means that a person has or holds any amount of ethyl alcohol anywhere on his person, or that a person owns or has custody of ethyl alcohol, or has ethyl alcohol within his immediate presence and control.

(d) "Private property" means any dwelling and its curtilage which is being used by a natural person or natural persons for habitation and which is not open to the public, and privately owned real property which is not open to the public. "Private property" shall not include:

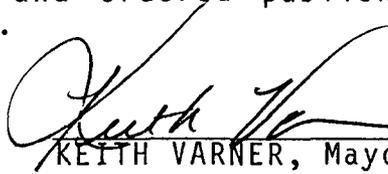
(I) Any establishment which has or is required to have a license pursuant to article 46, 47, or 48 of title 12, C.R.S.;

(II) Any establishment which sells ethyl alcohol or upon which ethyl alcohol is sold; or

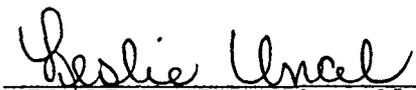
(III) Any establishment which leases, rents, or provides accommodations to members of the public generally.

Introduced and passed on first reading and ordered published in its entirety this 7th day of ~~May~~ ^{July}, 1992.

Adopted on second reading and ordered published by title only this 4th day of August, 1992.


KEITH VARNER, Mayor

ATTEST:


LESLIE UNCEL, City Clerk