

STAFF REPORT

DATE: January 10, 2012

TO: City Council

FROM: Landy Black, Police Chief

SUBJECT: Adoption of a Minor Alcohol Preclusion Ordinance for the City of Davis

Recommendation:

Staff recommends that the City Council take the following actions:

1. Introduce the attached Minor Alcohol Preclusion Ordinance (Exhibit A) adding Article 26.06 (Exhibit B) to the City's Municipal Code relating to the Minor Alcohol Preclusion Act.

Fiscal Impact:

Although a portion of the revenue from citations for violations of this ordinance would go to the General Fund, this is not intended to be a revenue generator for the City.

Council Goal:

Community Strength and Effectiveness
Downtown Davis

Background and Analysis:

As the culture of drinking in this country and in Davis, particularly among youth, has intensified over the past decade, so have the problems associated with it. The City of Davis, with over 30,000 students at UC Davis, has not been immune. Public safety officials continue to seek ways to address the problems to ensure the safety and well-being of all those who live in or visit the community. Staff is recommending an additional tool to assist public safety officials in maintaining a safe and healthy atmosphere through the addition of a local "Minor Alcohol Preclusion Ordinance." The ordinance would, if enacted, allow officers to cite minors who are found in public locations with alcohol in their system. Current law does not allow for this, unless the individual is incapacitated or unable to care for him/herself.

While this ordinance is not presented as a tool exclusively for Picnic Day, it is because of the challenges the community has had with Picnic Day in the past that staff began to search for other mechanisms to address inappropriate behavior during that weekend.

2003 Student Survey

In the fall of 2003, we were already aware that the excessive use of alcohol was a problem for Davis students. According to the UC Davis Student Health and Counseling Services, the rise in campus and community concern coincided with increasing recognition, nationwide, of the "culture of drinking" that had inundated campuses across the country. In 2003, national statistics documented the frightening annual scope of the problem:

- Over 1,700 deaths among 18-24 year old college students (including more than one death here in Davis)
- 590,000 students unintentionally injured while under the influence of alcohol
- More than 690,000 assaulted by another student who had been drinking
- More than 97,000 victims of alcohol-related sexual assaults or date rapes
- Nearly 25 percent of college students report negative academic consequences of drinking including missing class, falling behind, doing poorly on exams or papers or receiving lower grades overall.

In the fall of 2003 the UC Davis campus undertook a number of preliminary steps to address high-risk student drinking, which included taking part in the Safer California Universities Project, which was designed to evaluate the efficacy of a risk management approach to alcohol problem prevention.

The initial UC Davis student survey, completed in the fall of 2003, provided baseline data which indicated:

- 78% of UC Davis students reported drinking during the previous quarter
- 62% reported consuming alcohol during the previous 30 days, including 55% of underage students
- 31% reported “binge” drinking in the previous two weeks. (In the survey, binge drinking is defined as consuming 5 or more drink for males and 4 or more drinks for females in one sitting.)

The survey also determined the presence of a number of alcohol-related consequences within the UC Davis student environment, including:

- Drinking problems (e.g., drunk, passed out, felt unsafe)
- Aggressive behavioral problems (e.g., damaged property, was hurt or injured, was physically or sexually assaulted)
- Sexually related problems (e.g., sex with a new partner, unprotected sex, sex while intoxicated, pressured to have sex)
- Drove after drinking and rode with a drinking driver

These problems and behaviors took place in a variety of settings including:

- Greek/Fraternity parties
- Residence Hall parties
- Off-campus parties
- Campus events
- Bars/restaurants
- Outdoor parties

In almost every risk category, off-campus parties represented the environment most likely to result in negative consequences for alcohol consumption, followed by Greek-system parties. Residence Hall parties and bars/restaurants ranked as less likely locations for experiencing

negative consequences from alcohol consumption. Campus events and outdoor settings were the least likely environments for students to encounter problems related to drinking.

2004 and Sterling University Apartment Riots

In April 2004, a series of pre-Picnic Day parties took place throughout the City. Though most of those parties were without incident, or at least did not require police intervention, the events at the Sterling University Apartments were a different matter. Multiple parties joined together at the apartment complex, with hundreds of students and others in attendance. When police arrived in response to noise complaints, drunken partygoers became increasingly antagonistic; some outright hostile. As police attempted to disperse the increasingly riotous crowd, partygoers threw bottles and other objects. Davis police called reinforcements from neighboring police agencies to assist in finally dispersing the riot.

The following day, numerous large parties occurred in residential areas around the UC Davis campus. Police later shut down many of the parties as partygoers again became increasingly antagonistic and threatened a repeat of the previous night's riot. Barricades and police tape were used to keep people off University Ave, which was becoming dangerous due to large, out-of-control student partying.

It was reported to Council back in 2004 that the Picnic Day, alcohol-related incidents served as an urgent reminder about the apparent rise in alcohol consumption and partying in Davis—not only on Picnic Day, but year-round.

2010 and 2011 Picnic Day

Although weekend and Picnic Day partying and alcohol use continued to be a problem after 2004, it became clear on Picnic Day 2010 and again on Picnic Day 2011 the event was creating a severe public safety problem due to excessive alcohol use and alcohol-fueled, rowdy partying. As previously reported to the Council, problems then, and continuing to the present, stem from what has been termed a “Mardi Gras mentality,” where the sole purpose of the entire weekend, for those who do not engage in the formal campus events, is to get extremely intoxicated on inexpensive alcohol, without concern regarding their behavior. That mentality, coupled with the sheer number of visitors to the community, results in a difficult event (or series of events) to manage from a public safety perspective. Other concerns that have been raised are a potential disconnect between the city and the campus, the general culture surrounding alcohol and its excessive use—not only on Picnic Day, but year-round, and the lack of resources to address many of the subsequent problems.

Work to Date

2005 Safe Party Initiative

The UC Davis Safe Party Initiative was launched in fall 2005 to address some of the partying issues. The Davis Police Department has supported and participated with the initiative since its inception.

The initiative partners have emphasized:

- Establishing community norms of respect and safety among student and non-student neighbors.

- Creating safer party environments and educating students on risk reduction strategies.
- Enhancing enforcement of alcohol-related laws and increasing visibility of the enforcement effort.
- Developing more effective policies and enhancing use of existing policies at the local level.

Recent Activity

Since 2005, city staff, university official and community members have done a tremendous amount of work to curb problem alcohol use/abuse here in Davis, along with its associated problems. A few of the efforts include:

- The launch of the Safe Party website (<http://safeparty.ucdavis.edu>).
- Joint “party patrols” involving the Davis and UC Davis Police Departments.
- Developing a communication feedback loop alerting the student community to weekly aggregate citations issued for alcohol violations.
- “Shoulder tap” minor decoy operation to help reduce individuals buying alcohol for minors.
- DUI checkpoints in the City of Davis.
- Starting Davis Neighbors’ Night Out to help establish relationships among student and non-student neighbors.

While we are pleased to report that, according to the 2011 UC Davis student surveys, alcohol use dropped, we are disheartened to report that we still have considerable drinking, including illegal underage drinking, occurring in Davis. Despite intensive efforts, the 2010 survey determined that respondent-reported drinking in the previous 30 days fell from 62% in 2003 to 59% in 2010. Drinking by underage students also declined, but only from 55% to 49%. The same survey documented that the ratio of UC Davis students who reported drinking enough to be drunk/intoxicated during the quarter increased from 54% in 2003 to 60% in 2010. Even more discouraging, the data from the 2011 UC Davis National College Health Assessment reported that 47% of underage students, those under 21, consumed alcohol in the previous 30 days.

City of Davis High School Population

Underage alcohol use is not only prevalent among college students. Significant percentages of junior high and high school students also abuse alcohol. According the 2008-2009 Davis Joint Unified School District Healthy Kids Survey, 22% of 9th graders and 32% of 11th graders had consumed alcohol in the previous 30 days. It is still common for officers to respond to large parties where high school-aged teens are drinking.

Police Response

Finally, more recent Davis Police citation and arrest data would also indicate partying and underage drinking continues to be a problem. On average, Davis Police respond to 123 party calls per month (based on a monthly average since 2007 to 2010) and 28 drunk in public calls per month.¹ (See Exhibit C)

The 18-20 year old demographic accounted for 75% of the alcohol-related arrests/cites of minors in 2009/2010, and 73% of the alcohol-related arrests/cites of minors in 2010/2011. The number

of minors arrested for alcohol-related violations has increased by 47% between 2009/2010 and 2010/2011.ⁱⁱ (See Exhibit C)

As reported to Council by the City Manager's Office during the December 14, 2010 Picnic Day update, there is no one solution to solving Picnic Day problems, curbing illegal or excessive drinking, or dealing with nuisance partying in Davis. While prevention is always preferable to enforcement/punishment, the two concepts should and can be supportive of each other.

Proposed Ordinance

In that vein, a potential solution to curbing unlawful nuisance drinking and rowdy partying behavior, as well as punish those who choose to ignore the law, is to make it unlawful for any person under 21 years of age to have a blood alcohol content equal to or greater than .01%, by weight, on any street or highway, or in any public place, or in any place open to the public.

As previously reported to Council, the State of California regulates most issues involving alcohol, including the possession and sales of alcohol. One area not completely regulated by the State involves the private consumption of alcohol. In other words, the City is able to adopt a local ordinance making it unlawful for a minor to be in a public place with alcohol in their blood. In fact, a substantially similar Del Norte County ordinance was recently upheld by the courts. (See *In re Jennifer S.* (2009) 179 Cal.App.4th 64.)

This proposed ordinance is not redundant with any other local or state statute and is a necessary next step in curbing unlawful drinking and partying behavior. To briefly review existing laws and some of the practical enforcement limitations.

1. It is illegal to consume or possess open containers of alcohol in specified public places in Davis (§26.04.020 Davis Municipal Code (DMC)). For an officer to take enforcement action, the officer must witness the consumption or possession in the specified public place. In other words, a minor can consume alcohol in a private place, enter a public place, and no violation under the ordinance has occurred.
2. Drunk in public (§647(f) Penal Code (PC)). This statute requires a person to be in a public place and intoxicated to the point they are unable to take care of themselves. In other words, they have to be very intoxicated in order to be taken into physical custody. Most people who have been drinking alcohol do not fall under this category/level of intoxication.
3. It is illegal for a minor to possess alcohol in a specified public places (§25662(a) Business and Professions Code (BP)). For an officer to take enforcement action, they must witness the minor in possession of the alcohol in a specified public place.
4. It is illegal for a minor to purchase or attempt to purchase alcohol (§25658 and § 25658.5 BP).

5. It is illegal for a minor to drive a vehicle with a blood alcohol content of .01% or greater (§23136 California Vehicle Code). This section does not apply unless the minor was operating a motor vehicle at the time they had alcohol in their blood.
6. It is illegal for a person to permit, allow or host a party, gathering or event at his or her place of residence or other private property, place or premises where persons under the age of twenty-one years are present and alcoholic beverages are in the possession of, or are being consumed by, any person under the age of twenty-one years (§26.01.110 DMC). The host is subject to citation, but the minors drinking alcohol are not.

Minors with even low-levels of alcohol in their system are at an increased risk of harm. Research has shown that minors with a blood alcohol content as low as .01%, essentially the equivalent of drinking one normal-sized alcoholic drink, experience relaxation, which can lead to a loss of inhibition and a false sense of well-being, problems with alertness and judgment, and increased risk-taking. Consuming just a few drinks leads to loss of coordination and a further loss of emotional control, which can lead to further risk-taking and other anti-social behavior.ⁱⁱⁱ

If enacted, the Minor Alcohol Preclusion Act would be widely publicized using the existing forums for alcohol education and outreach. As with other local ordinances, this is just another tool that can be used to combat nuisance parties and social gatherings that serve alcohol to minors. What makes this ordinance unique, and distinguishable from the others, is that a minor can drink in a private place, out of view of the public, but when they then enter a public place, are otherwise lawfully contacted and/or detained, and have been drinking, they would be subject to a fine-only offense. Our belief is this will have a very strong deterrent effect on illegal, underage drinking, as well as provide patrol officers with a useful tool in faithfully and effectively dealing with minors who have consumed alcohol and entered public places.

Attachments

- Exhibit A: City of Davis Minor Alcohol Preclusion Act Ordinance.
- Exhibit B: New Article 26.06 of the Davis Municipal Code (Minor Alcohol Preclusion Ordinance)
- Exhibit C: Data regarding alcohol-related incidents

EXHIBIT A

ORDINANCE NO. XXXX

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DAVIS ADDING ARTICLE
26.06 TO THE CITY OF DAVIS MUNICIPAL CODE CREATING THE MINOR
ALCOHOL PRECLUSION ACT**

WHEREAS, problems associated with the consumption of alcohol by those under 21 years of age causes serious community concerns regarding public safety; and

WHEREAS, alcohol is considered “a drug of choice” by local youth, and despite it being illegal for those under 21 years of age to purchase, receive, or possess alcohol, minors still have ready access to alcohol and illegally consume it; and

WHEREAS, the excessive and illegal consumption of alcohol by minors can lead to serious consequences, including serious violence and/or unintended injuries and deaths; and

WHEREAS, the use of alcohol by developing adolescents can lead to severe health problems, including negative effects on the brain, liver, and other body organs; school problems, such as higher absence and poor or failing grades; social problems, such as fighting and lack of participation in youth activities; physical problems, such as hangovers or illnesses; and unwanted, unplanned, and unprotected sexual activity; and

WHEREAS, youth alcohol-use data indicates the earlier an individual begins drinking, the greater their risk of developing alcohol-use problems and dependency in the future; and

WHEREAS, the City desires to take measures to protect the health, safety, and welfare of City residents and visitors to the City of Davis.

THE CITY COUNCIL OF THE CITY OF DAVIS HEREBY ORDAINS AS FOLLOWS:

Section 1. Article 26.06, entitled “Minor Alcohol Preclusion Act,” is hereby added to the Municipal Code of the City of Davis to read as shown on Exhibit B.

Section 2. If for any reason any portion of this ordinance is found to be invalid by a court of competent jurisdiction, the balance of this ordinance shall not be affected.

Section 3. The Mayor shall sign this Ordinance and the City Clerk shall cause the same to be published within fifteen (15) days after its passage at least once in a newspaper of general circulation published and circulated in the City.

Section 4. This ordinance becomes effective thirty (30) days after its final passage and adoption.

This ordinance was introduced on the 10th day of January, 2012, and DULY AND REGULARLY ADOPTED by the City Council of the City of Davis this XX day of [Month] 2012, by the following vote:

AYES:

NOES:

Joseph F. Krovoza
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

EXHIBIT B

26.06 MINOR ALCOHOL PRECLUSION ACT

26.06.010 Title

This article shall be known as the “Minor Alcohol Preclusion Act.”

26.06.020 Minors in Public Places

(a) It is unlawful for any person under 21 years of age to have a blood alcohol content equal to or greater than .01%, by weight, on any street or highway or in any public place or in any place open to the public.

(b) An officer detaining or arresting a person for a violation of this article shall request the person consent to a preliminary alcohol screening test, or other evidentiary breath test if a preliminary alcohol screening test is not available, for the purpose of determining the presence of alcohol in the person. The testing shall be incidental to a lawful detention and administered at the direction of a peace officer having reasonable cause to believe the person was in violation of subdivision (a).

(c) Any person arrested for a violation of this article may request to have a preliminary alcohol screening test, or other evidentiary breath test if a preliminary alcohol screening test is not available, for the purpose of determining the alcohol content of that person’s blood, and, if so requested, the arresting officer shall have the test performed.

(d) Notwithstanding the provisions in subdivisions (b) and (c), a person may be found to be in violation of subdivision (a) if the person was, at the time they were contacted or detained, on any street or highway or in any public place or in any place open to the public, under the age of 21 years, and under the influence of, or affected by, an alcoholic beverage regardless of whether a preliminary alcohol screening test, or other evidentiary breath test, was performed to determine that person’s blood-alcohol concentration.

26.06.030 Effect

This article does not make unlawful any act expressly permitted or expressly prohibited by the general laws of the state of California.

26.06.040 Penalties and Violations

A violation of this article shall constitute an infraction, punishable by a fine or other appropriate alternative remedy.

EXHIBIT C

i

	2007	2008	2009	2010
ALCOHOL INCIDENTS	125	104	99	70
PARTY CALLS	1548	1381	1497	1522
DRUNK IN PUBLIC ARRESTS	288	357	330	354

ii **Minor Arrests/Cites Broken Down by Age (DUI, possession of alcohol, open container, drunk in public)**

	2009/2010	2010/2011
< 14	3	4
15	4	6
16	13	15
17	11	24
18	21	21
19	37	48
20	35	64
Total Arrested	124	182

iii National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism (n.d.) *Information about Alcohol*. Retrieved from <http://science-education.nih.gov/supplements/nih3/alcohol/guide/info-alcohol.htm>