

ORDINANCE NO. 2011.56

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 5, AMUSEMENTS, ARTICLE III, TEMPE CITY CODE, RELATING TO LARGE PARTIES, GATHERINGS OR EVENTS, BY AMENDING SECTIONS 5-30, 5-31, 5-32, AND 5-33 RELATING TO NUISANCE PARTIES AND UNLAWFUL GATHERINGS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 5, Article III of the Tempe City Code is hereby amended by amending Section 5-30 as follows:

ARTICLE III. ~~LARGE~~ NUISANCE PARTIES AND UNLAWFUL GATHERINGS ~~OR~~ EVENTS

Sec. 5-30. Purpose.

The city finds and determines that the control of ~~large~~ NUISANCE parties ~~gatherings or events~~ on private property is necessary when such continued activity is determined to be a threat to the peace, health, safety or general welfare of the public. Police officers are often required to make several return trips to a location of a NUISANCE party ~~gathering or event~~ in response to complaints, in order to disperse uncooperative participants or enforce criminal laws, and the return of police officers to a location constitutes a drain of personnel and resources which may leave other areas of the city without minimal levels of police protection, all of which creates a significant hazard to the safety of the police officers and to the public in general.

THE CITY FINDS AND DETERMINES IT IS A PUBLIC NUISANCE FOR ANY RESPONSIBLE PERSON OR SOCIAL HOST TO PERMIT, ALLOW, OR HOST AN UNLAWFUL GATHERING AT HIS OR HER PLACE OF RESIDENCE (OR OTHER PRIVATE REAL PROPERTY UNDER HIS OR HER OWNERSHIP OR CONTROL) WHERE SPIRITUOUS LIQUOR IS SERVED TO, OR IS IN THE POSSESSION OF, OR CONSUMED BY, ANY MINOR, OR WHERE ILLEGAL DRUGS ARE IN THE POSSESSION OF, OR CONSUMED BY, ANY PERSON. WHEN UNLAWFUL GATHERINGS OCCUR, THE CITY

FINDS AND DETERMINES THAT EARLY INTERVENTION THROUGH SUBSTANCE USE EDUCATION FOR THE RESPONSIBLE PERSON IS DESIRABLE.

Section 2. That Chapter 5, Article III of the Tempe City Code is hereby amended by amending Section 5-31 as follows:

Sec. 5-31. Definitions.

For the purpose of this article, the following terms shall have the meanings respectively ascribed to them herein unless the context requires otherwise:

- (1) *JUVENILE* MEANS A MINOR UNDER THE AGE OF EIGHTEEN (18) YEARS.
- (2) *MINOR* MEANS ANY PERSON UNDER THE AGE OF TWENTY-ONE (21) YEARS.
- (~~1~~) (3) *Large NUISANCE Party, gathering or event* means a party, gathering or event of five (~~5~~) or more AN ASSEMBLY OF persons who have assembled or are assembling for a social activity or for a special occasion in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property. This includes, but is not limited to, excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace and litter.
- (~~2~~) (4) *Police services SERVICE FEE* means the service fee as shown by a schedule adopted by the CITY COUNCIL WITH THE RECOMMENDATION OF THE police chief which is based on the number of officers and units, per hour, to respond to or remain at the large A NUISANCE party OR UNLAWFUL gathering or event; which schedule may also include any appropriate overhead; the cost of any medical treatment to injured officers; any loss or damage incurred by the department, and the cost of repairing any damaged city equipment or property;
- (~~3~~) (5) *Responsible person* means the person who owns the property where the NUISANCE large party OR UNLAWFUL gathering or event takes place; or the person in charge of the premises; or the person who organized the NUISANCE large party OR UNLAWFUL gathering or event. If such a person is A JUVENILE minor, the term "responsible person" includes, in addition to the JUVENILE minor, the JUVENILE'S minor's parents or guardians. RESPONSIBLE PERSON DOES NOT INCLUDE OWNERS OR PERSONS IN CHARGE OF PREMISES WHERE AN UNLAWFUL GATHERING TAKES PLACE IF THE PERSONS IN ATTENDANCE OBTAINED USE OF THE PROPERTY THROUGH ILLEGAL ENTRY OR TRESPASSING;
- (~~4~~) (6) *Special security assignment* means the police services provided during a second or subsequent call during a ninety (90) day period to the location of a large party, gathering or event after the distribution of a written warning that a police service fee may be imposed for costs incurred by the city for any subsequent police response.

- (7) *SPIRITUOUS LIQUOR* SHALL HAVE THE SAME MEANING AS DEFINED IN A.R.S. § 4-101(31).
- (8) *UNLAWFUL GATHERING* MEANS A PARTY, GATHERING, OR EVENT WHERE SPIRITUOUS LIQUOR IS SERVED TO, OR IS IN THE POSSESSION OF, OR CONSUMED BY, ANY MINOR, OR WHERE ILLEGAL DRUGS ARE IN THE POSSESSION OF, OR CONSUMED BY, ANY PERSON, REGARDLESS OF WHETHER IT WOULD OTHERWISE QUALIFY AS A NUISANCE PARTY.

Section 3. That Chapter 5, Article III of the Tempe City Code is hereby amended by amending Section 5-32 as follows:

Sec. 5-32. Recovery of costs for police services.

(a) When any police officer responds to any NUISANCE ~~large party gathering or event~~ and that police officer determines that there is a threat to the public peace, health, safety or general welfare, the police officer shall issue a written notice to any responsible party that a second or subsequent response to any NUISANCE ~~large party gathering or event~~ at that same location or address within ninety (90) days of the first response shall be deemed a special security assignment rendered to provide security and order on behalf of the NUISANCE ~~large party gathering or event~~, and that any responsible party may be liable for a police service fee for such special security assignment. The return call, or second or subsequent response, may also result in the arrest or citation of violators of state law or city ordinances.

~~(b)~~(1) If, after written notice provided in subsection (a), a second or subsequent police response or responses is necessary to the same location or address FOR A NUISANCE PARTY within ninety (90) days of the first response, such response shall be deemed a special security assignment and subject to police service fee as provided in this article.

~~(e)~~(B) A RESPONSIBLE PERSON FOR AN UNLAWFUL GATHERING SHALL BE ASSESSED THE POLICE SERVICE FEE UPON THE FIRST POLICE RESPONSE. THE RESPONSIBLE PERSON MAY BE ELIGIBLE FOR SUBSTANCE USE EDUCATION CLASS IN LIEU OF THE FIRST-TIME POLICE SERVICE FEE ASSESSMENT.

Section 4. That Chapter 5, Article III of the Tempe City Code is hereby amended by amending Section 5-33 as follows:

Sec. 5-33. Police service fee for special security assignment.

(a) The police service fee for special security assignments ARISING OUT OF NUISANCE PARTIES shall include the cost of personnel and equipment, and shall be established by the city council (see Appendix A). THE POLICE SERVICE FEE FOR SPECIAL SECURITY ASSIGNMENTS ARISING OUT OF UNLAWFUL GATHERINGS SHALL BE PROGRESSIVE DEPENDING ON THE NUMBER OF REPEAT UNLAWFUL GATHERINGS, AND SHALL BE ESTABLISHED BY CITY COUNCIL (SEE APPENDIX

A).

(b) The amount of such police service fees charged shall be deemed a joint and several debt to the city of any and all responsible person or persons, whether they received the benefit of such special security assignment services or not. If the ~~person~~ responsible PERSON for the ~~large~~ NUISANCE party OR UNLAWFUL gathering ~~or event~~ is a JUVENILE ~~minor~~, then the parents or guardians of that JUVENILE ~~minor~~ will also be jointly and severally liable for the costs incurred for police services. Any person owing money due for the police service fee shall be liable in an action brought in the name of the city for recovery of such amount, including reasonable attorney fees.

(c) If a responsible person is the person who owns the property where A ~~the~~ NUISANCE ~~large party gathering or event~~ OR UNLAWFUL GATHERING takes place, the owner will not be charged the police service fee unless:

- (1) The owner was present at or had knowledge of the NUISANCE ~~large party~~; OR UNLAWFUL gathering ~~or event~~; or
- (2) If the owner had been sent a notice from the city that a NUISANCE ~~large party gathering or event~~ had taken place on his property, and a subsequent NUISANCE ~~large party gathering or event~~ occurs within ninety (90) days of the mailing of such notice to the owner.

(d) The city may waive part or all of a police service fee charged against the owner of the property where a NUISANCE ~~large party gathering or event~~ takes place if the owner provides proof that they did not have an adequate period of time to prevent the ~~large party, gathering or event~~ NUISANCE PARTY that triggered the fee, or that they have taken action to prevent the occurrence of future disturbances at the property.

(e) The city does not waive its right to seek reimbursement for costs through any other legal remedies or procedures.

Section 5. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ____ day of _____, 2011.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney