

ORDINANCE NO. 2009-1318

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, CALIFORNIA, ADDING CHAPTER 10.46 ALCOHOLIC BEVERAGES – RESPONSIBLE BEVERAGE SALES AND SERVICE TO THE SAN MARCOS MUNICIPAL CODE REQUIRING RESPONSIBLE SALES AND SERVICE TRAINING

WHEREAS, the City of San Marcos is a hospitality destination for families, visitors and community members alike; and

WHEREAS, the City of San Marcos includes alcohol outlets licensed by the California Department of Alcoholic Beverage Control for on and off-site sale of alcohol; and

WHEREAS, stores, bars and restaurants which sell or serve alcohol to minors or to the intoxicated patron pose a threat to the public health and safety of the City of San Marcos; and

WHEREAS, the threat to public health and safety includes the injuries and deaths caused by vehicle crashes, sexual assaults, domestic violence and other crimes which occur as a result of service of alcohol to minors or service to the intoxicated patron; and

WHEREAS, Responsible Beverage Service and Sales (RBSS) training is a successful method for alcohol licensees to educate their managers and servers on the effects of over-service and service to minors, and on techniques to avoid over-service and service to minors; and

WHEREAS, RBSS training provides alcohol licensees with a clear understanding of California Department of Alcoholic Beverage Control (ABC) and other state regulations, and is highly recommended by the ABC; and

WHEREAS, training in RBSS and the accompanying certification gives credibility and distinction to alcohol sales and service as a profession; and

WHEREAS, better trained staff will assist the alcohol licensee in protecting their valuable alcohol license, and in reducing their business liability; and

WHEREAS, alcohol licensees who have RBSS trained staff demonstrate to patrons and other community members and agencies that public safety is their highest concern.

NOW, THEREFORE, the City Council of the City of San Marcos, in accordance with the freedom accorded to charter cities generally, and by the Charter of the City of San Marcos, specifically does ordain as follows:

Section 1. Chapter 10 of the San Marcos Municipal Code is hereby amended by adding Chapter 10.46 Alcoholic Beverages – Responsible Beverage Sales and Service as follows:

**Chapter 10.46
Alcoholic Beverages – Responsible Beverage Sales and Service**

10.46.010 Definitions.

As used in this chapter, the following words and phrases have the meanings set forth in this section:

- A. “Alcoholic beverage” shall have the same meaning as in the California Business and Professions Code section 23004 or any successor section.
- B. “Alcohol outlet” means any physical location or structure from which any alcoholic beverage may be sold, delivered, or served at retail pursuant to a license granted by the California Department of Alcoholic Beverage Control.
- C. “Business certificate” means a certificate or license authorizing a business to operate within the City of San Marcos.
- D. “Licensee” means any person or entity that has a license for the retail sale, delivery, or service of alcoholic beverages from the California Department of Alcoholic Beverage Control.

- E. "Manager" means the person, regardless of job title or description, who has discretionary powers to organize, direct, carry on, control or direct the operation of an alcoholic outlet.
- F. "Server" means any person who, as part of his or her employment, sells, serves or delivers any alcoholic beverage.
- G. "Patron" means a customer who purchases alcohol through a sale, service or delivery.
- H. "Responsible Beverage Sales and Service Training" or "RBSS Training" means a training program conducted by the California Department of Alcoholic Beverage Control or by a certified RBSS Training Provider to train alcohol licensees, their managers and servers in responsible alcoholic beverage sales and service methods and practices.

10.46.020 Responsible Beverage Service Training Required – Proof.

- A. No alcohol outlet may serve, sell, or arrange delivery to a patron any alcoholic beverages unless a manager, assistant manager or lead employee who has completed a Responsible Beverage Service and Sales Training course is on the premises.
- B. No licensee, manager or server shall sell, serve or deliver to a patron any alcoholic beverage unless he or she has completed RBSS Training. However, licensees, their managers and servers shall have ninety (90) days from the date of beginning of such activities or the effective dates of this Chapter, whichever is later, to complete RBSS Training. Businesses existing as of the effective date of this ordinance shall have one hundred eighty (180) days from the effective date of this ordinance to comply with this Chapter. Thereafter, all said businesses shall have ninety (90) days from the date of the beginning of such activities to comply with this Chapter.
- C. Certification received from an RBSS Training program will be considered valid for a period of two years from the date of certification.
- D. Licensees shall be responsible for ensuring that all managers and servers they employ comply with this section.
- E. Licensees shall maintain on the premises a file of proof of completion of the RBSS Training by the licensee, managers and servers that shall be available for inspection by any peace officer or other enforcement officer during regular business hours. The proof of completion shall include (1) the effective date of hire, (2) course completion date and, if applicable, the course renewal date, (3) the name of the certified RBSS Training completed, (4) a copy of each training certificate, if available, and (5) identifying information of the licensee, managers and servers, including the name, address, phone number and California driver's license number, if applicable.

F. The City shall provide to all applicants for a business certificate that are alcohol licensees, as defined in this chapter, a summary of the requirements of this chapter together with its penalties for violation prior to issuing a business certificate or renewal.

10.46.030 Violation—Penalty

- A. Violation of any provision of this chapter or failure to comply with any requirement of this chapter is an infraction and shall be punishable in accordance with the provisions of Section 1.12.010 of the San Marcos Municipal Code. At the discretion of the prosecutor, a violation of this chapter may be charged as a misdemeanor.
- B. Civil Action. In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City pursuant to section 1.12.020 of this Code.
- C. Administrative Citation. Alternatively, any violation of this Chapter may be enforced by administrative action brought by the City pursuant to Chapter 1.14 of this code, to include civil fines not exceeding one thousand dollars (\$1,000.00) per offense occurrence.

Section 2. If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted the Ordinance, and each section, sentence, clause or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 3. This Ordinance shall be effective thirty (30) days following its adoption. Within fifteen (15) days following its adoption, the City Clerk shall publish this Ordinance of the title thereof, as a summary as required by state law.

Section 4. The City Clerk shall certify to the passage of this Ordinance and cause the same to be published in accordance with the provisions of State Law in a newspaper of general circulation designated for legal notices publication in the City of San Marcos.

INTRODUCED at a regular meeting of the City Council of the City of San Marcos held on the 14th day of April, 2009, and, thereafter,

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Marcos held on the 28th day of April, 2009, by the following roll call vote:

AYES: COUNCILMEMBERS: MARTIN, ORLANDO, PRESTON, DESMOND

NOES: COUNCILMEMBERS: JONES

ABSENT: COUNCILMEMBERS: NONE

APPROVED:

James M. Desmond, Mayor
City of San Marcos

ATTEST:

APPROVED AS TO FORM:

Susie Vasquez, City Clerk
City of San Marcos

Helen Holmes Peak, City Attorney
City of San Marcos

A signed version is on file in the City Clerk Department.