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Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Re: *Proposed Social Host Ordinance*

Honorable Board Members:

I am writing to express concern over the draft "social host" ordinance currently being considered by the Board of Supervisors. As currently proposed, the ordinance is exceedingly broad, vague and arbitrary as to what conduct violates the ordinance and who can be held responsible. Furthermore the ordinance would expose those persons designated as social hosts to an unreasonable amount of potential liability, even for actions beyond their control.

The first serious problem with the ordinance is with the definition of "assemblage" provided in Sec. 47-2(c). By including any "gathering" of five or more person of which two or more are minors – and not defining "gathering" - the ordinance is so broad as to cover a wide variety of situations which I am sure the Board does not wish to regulate. Does this counsel wish to cover Borders Bookstore, for example? Because that establishment would meet the definition of an assemblage as long as two persons in the store were under 21. So might a house in Isla Vista rented by five people, two of whom are under 21. A "gathering" may be occurring any time all the residents were home at the same time, regardless of whether a party was occurring.

Just as concerning is the extensive – in fact almost limitless – range of conduct that turns a gathering or event into an assemblage. Should the presence of a piece of litter turn a quiet get-together into a public nuisance? According to the ordinance it would. The final phrase, "any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare," is so broad as to include nearly anything an officer

wishes. This renders the statute so vague that it provides inadequate notice as to what conduct is prohibited.

Next, the definition of a “responsible person” is liable to lead to arbitrary and unfair enforcement. Not only can an officer choose nearly anyone associated with the gathering to be the responsible person, but it is not even necessary that the responsible person be present, or that he knew or should have known a minor present had alcohol. A similar social host ordinance in San Diego was recently found unconstitutional for exactly this reason – that the responsible party need not provide alcohol or know minors present have alcohol.

In fact, because there is no knowledge requirement, a social host is liable under the statute if a minor is at a gathering and possesses or consumes alcohol without anyone else knowing. So, if a 20 year old woman walked into a friend’s apartment while carrying a flask of alcohol in her purse, that “gathering” would now violate the ordinance, even if the apartment residents were hosting a “dry” party. One can come up with even more absurd scenarios that would violate the statute. That same young woman with the flask could turn the Borders store into an assemblage just as easily. So could an underage roommate who has alcohol stashed in his kitchen cupboard. It is plainly unreasonable that someone should be punished for the actions of a third party over which he has not control, and no reason to believe is violating any law.

Equally as troubling are the consequences that follow from a violation. The first is the essentially limitless discretion given the county to “abate” the nuisance. Section 47-5 allows the county to abate the nuisance in any manner allowed by state or federal law. Can the county forcibly evict apartment dwellers or shut down a business, or example? It can, so long as affected party can’t prove state or federal law has been violated. Certainly some limits are appropriate here.

As for fines, the provision in section 47-6(b) making subsequent fines payable by the responsible person regardless of whether he was the responsible person for any prior assemblage will almost certainly lead to unfair results. Tenants would be held responsible as repeat offenders because of violations occurring before they ever moved in, and of which they were never aware. A charity group holding an event at a private concert hall would be considered a repeat offender only because any earlier group once committed a violation at the same location. Also, while liability for future response costs is limited to twelve months, there is no such provision for multiple fines. So it appears the charity in my example would be liable for the conduct of another group that occurred decades prior, as would a homeowner or renter who was unlucky enough to reside in a home where a former resident violated the ordinance. I

cannot imagine the Board finds this to be reasonable, nor would a court reviewing the ordinance's constitutionality.

As for response costs, detailed in section 47-11, the ordinance contains a dangerous ambiguity. Once a responsible person is warned, that person is responsible for future responses at that location. The ordinance is silent as to whether this means a subsequent response at that location must be due to a gathering involving the same responsible person. So the ordinance could be interpreted to allow the first responsible person to be liable for response costs of subsequent violations at the same location, even if the later violation is committed after the person has moved away or otherwise no longer has control of the premises. One might think that absurd, if not for the fact that the ordinance already holds persons responsible as repeat offenders based on the actions of others. This ambiguity needs to be cured.

The broad language of the response costs section also open a responsible person to a huge amount of liability regardless of whether the gathering proximately caused any damage. According to section 47-2(g), responsible persons are responsible for medical treatment of law enforcement personnel and damage to equipment incurred going to, at, or leaving from an assemblage, regardless of whether that damage was caused by the assemblage. If an officer leaving an assemblage crashes his cruiser while responding to an emergency call, should the social host be responsible? How about a host who calls an ambulance when a guest suffers a seizure? Common sense says no, the ordinance says yes.

Finally, as to the administrative appeal, there is no standard provided for how fines will be reviewed. Does the hearing examiner have complete discretion to alter the fine as she sees fit, or can she only do so under certain circumstances? Does her power to "modify" the fine mean she can increase it? Some reasonably concrete parameters are necessary.

Finally, in addition to taking a serious look at the flaws in the ordinance as currently drafted, I would ask the Board to reconsider whether it is wise to have such an ordinance at all. Underage drinking carries with it a number of problems. But this issue has been around for generations, and there is little if any evidence the problem has gotten worse in recent years. Why now do we need yet another law to deal with this? It is already a misdemeanor punishable by a \$1,000 fine to furnish alcohol to a minor. (\$3,000 if the minor is under 18.) Public intoxication and possession of alcohol by a minor each carry a one year license loss per incident. And of course law enforcement already has the power to disburse parties that have become a nuisance. Would this ordinance really do any more to discourage underage drinking or address its associate problems?

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Balance the marginal benefit of the ordinance against its likely serious costs. In my work with the UCSB Associated Students Legal Resource Center, I deal with the Isla Vista student population on a regular basis, and a commonly expressed sentiment is that law enforcement exists in Isla Vista to control and punish, not protect and serve. As a result, students frequently are reluctant to report crimes such as battery or even sexual assault occurring at parties. The attitude is that if law enforcement were to respond, they would be more concerned with citing drinkers and party hosts. This ordinance would only exacerbate the problem. How likely is a social host to call the foot patrol about a domestic violence incident occurring at his party if he knows he will be fined and made to pay for their coming to his apartment? Will the passage of yet another law aimed at punishing young people for drinking make a young woman who was sexually assaulted while drunk at a party feel more or less safe reporting the incident to the police? If this Board wishes to make serious crimes such as these even less likely to be reported, the social host ordinance is a good way to do it.

Not only is this ordinance drafted so poorly as to be unfair, overbroad and possibly unconstitutional, but it does little if anything to add to the already ample tools available to law enforcement. On the other hand, the social host ordinance would serve to reinforce the notion that young people should be afraid of law enforcement – a perception which poses as many dangers as does drinking. I urge the Board to seriously consider these suggestions and to act in a responsible way.

Respectfully,

A handwritten signature in dark ink, appearing to read "David Andreasen", written over a faint, dotted horizontal line.

David Andreasen