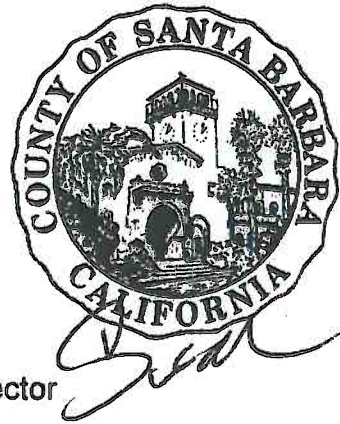


# Memorandum

2010 JUN -9 PM 3:52



**Date:** June 9, 2010  
**To:** Michael Allen, Clerk of the Board  
**From:** Susan Paul, Assistant CEO/Human Resources Director  
**Subject:** Agenda Item for June 15, 2010 Board Meeting – 2<sup>nd</sup> Reading – Establishment of a Social Host Liability Ordinance  
**cc:** Michael F. Brown, County Executive Officer  
Dennis Marshall, County Counsel  
Steve Underwood

At the June 1, 2010 Board meeting, the Board of Supervisors voted to amend the County Ordinance by adding Chapter 48 to create a Social Host Liability Ordinance for the County of Santa Barbara. During the meeting, the Board directed staff to make change the title of the Ordinance to reflect that it is a Social Host Liability Ordinance.

Attached to this correspondence is the revised Ordinance for the second reading which is scheduled for the June 15, 2010 Board Meeting.

The new recommendation for the meeting is as follows:

Consider the adoption (second reading) of the Ordinance entitled "An Ordinance of the Board of Supervisors Adding Chapter 48 to the Santa Barbara County Code to Provide Social Host Liability for Underage Drinking."

Please agendaize this item and distribute the revised Ordinance, per the usual procedures. If you have any questions, please give either Susan Paul a call at extension 2817, or Jeri Muth at extension 2816. Thank you for your assistance.

Attachment

2010 JUN -9 PM 3:54  
COUNTY OF SANTA BARBARA  
CLERK OF THE  
BOARD OF SUPERVISORS

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE BOARD OF SUPERVISORS ADDING CHAPTER 48 TO THE SANTA BARBARA COUNTY CODE TO PROVIDE SOCIAL HOST LIABILITY FOR UNDERAGE DRINKING.**

The Board of Supervisors of the County of Santa Barbara does hereby ordain as follows:

**Section 1. Findings.**

The Board of Supervisors hereby finds, determines, and declares that:

- (a) The County of Santa Barbara pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety and general welfare of its residents;
- (b) The occurrence of unlawful, loud or unruly gatherings on private premises where alcoholic beverages are served to or consumed by underage persons is harmful to the underage persons themselves and a threat to public health, safety, quiet enjoyment of residential property and general welfare;
- (c) Underage persons often obtain alcoholic beverages at gatherings that occur on premises that are under the control of a person who knows, or should know of the underage service and/or consumption. Persons responsible for gatherings on private premises over which they have control have failed to ensure that alcoholic beverages are neither served to nor consumed by underage persons at these parties;
- (d) Problems associated with unlawful, loud or unruly gatherings at which alcoholic beverages are served to or consumed by underage persons are difficult to prevent and deter in the absence of the ability of law enforcement to prevent such unlawful and unruly gathering;
- (e) Control of unlawful, loud or unruly gatherings on private property where alcoholic beverages are served to or consumed by underage persons is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;
- (f) The availability of alcoholic beverages to underage persons will be reduced if persons are held responsible for causing or abetting unlawful, loud or unruly gatherings on private premises where alcoholic beverages are served to or consumed by underage persons on private premises under their control;
- (g) Law enforcement, fire and other emergency response services personnel responding to such unlawful, loud or unruly gatherings results in the expenditure of public safety resources of the County;
- (h) The intent of this Ordinance is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. Imposing responsibility for the nuisances created by unlawful, loud and unruly gatherings on those persons who sponsor them is necessary to deter and prevent such gatherings.

**Section 2. Sections Added.**

The following sections are hereby added to Chapter 48 of the Santa Barbara County Code to read as follows:

**Sec. 48-1. Title.**

The title of this chapter shall be "Santa Barbara County Social Host Liability Ordinance"

**Sec. 48-2. Definitions.**

The following words and phrases, whenever used in this chapter, shall have the meaning and be construed as defined in this section.

**A. PARTY, GATHERING, OR EVENT.** A group of five or more persons who have assembled or are assembling for a social occasion or a social activity, at least one of whom is a minor and not a blood relative.

**B. PERSON.** Any person(s) who owns, rents or otherwise controls premises that knowingly hosts, permits, promotes, organizes, or allows a gathering at which they allow the possession or consumption of alcoholic beverages by any minor on such premises or fails to take reasonable corrective action upon learning of the possession or consumption of alcoholic beverages by any minor on such premises.

**C. MINOR.** Any person under the age of 21 years.

**D. KNOWINGLY.** Shall mean being aware of, or having reason to be aware of a party, gathering or event.

**E. PRIVATE PREMISES.** Any home, yard, open areas adjacent thereto, and accessory structures; apartment, condominium; hotel or motel room; or a hall or meeting room, or any other dwelling unit whether occupied on a temporary or permanent basis, whether occupied as a dwelling, for a party, or for other social function, and whether owned, leased, rented, or used with or without compensation.

**F. CONTROL.** The actual or apparent authority and ability to regulate direct or dominate private premises, including but not limited to the control exercised by tenants, lessees, and owners who have notice of underage drinking on their property.

**G. ALCOHOLIC BEVERAGE OR ALCOHOL.** Shall have the meaning given to that term under State law.

**48-3. Unlawful Gatherings on Private Real Property When Alcohol is Served to Minors; Declaration of Public Nuisance.**

**A. Unlawful Gatherings.** No person(s) shall permit, allow, or host a party, gathering, or event at his or her place of residence or on other private premises under the person(s) control where alcoholic beverages are in the possession of, or consumed by, any minor or fail to take reasonable corrective action upon learning of the possession or consumption of alcoholic beverages by a minor on such premises. Reasonable corrective action shall include but is not limited to:

1. Verifying the age of the persons attending the social gathering by inspecting Drivers Licenses or other government-issued identification cards;
2. Making a prompt demand that such minor either forfeit the alcoholic beverages and refrain from the consumption of such or depart from the premises;
3. If such minor does not comply with such request, either promptly reporting such underage consumption of alcohol to the local law enforcement agency or to any other person having a greater degree of authority over the conduct of such minor.

**B. Public Nuisance.** It is hereby declared to be a public nuisance for any person to permit, allow, or host a party, gathering, or event at his or her place of residence (or other private premises under his or her ownership or control) where alcoholic beverages are in the possession of, or are being consumed by, any minor.

**C. Exceptions**

Nothing in this chapter should be interpreted to prohibit the consumption or possession of alcohol by an underage person for legally-protected religious practices or legally protected family gatherings involving the use of alcohol beverages which occur exclusively between a minor and his or her parent or legal guardian, pursuant to Article 1, Chapter 4 of the California Constitution.

**48-4. Violation and Penalty.**

**A. Violation.** Any person(s) who knowingly permits, allows, or hosts a party, gathering, or event at their place of residence (or other private property under that person(s) control) where alcoholic beverages are in the possession of, or are being consumed by, any minor on such premises, or fails to take reasonable corrective actions upon learning of the possession or consumption of alcoholic beverages by any minor on such premises shall be liable and responsible for, and shall pay to the County, civil penalties in the amount specified in subsection (B) hereof. Such penalties shall be imposed and collected in the manner specified in Section 48-5 and 48-6. Any person who knowingly violates this section may appeal the violation pursuant to section 48-5 and any civil penalty will be stayed pending the outcome of the appeal.

**B. Civil Penalty.**

1. A first violation of Section 48-4A shall make the person responsible for the violation liable for a civil penalty of five hundred dollars (\$500.00); and the successful completion of a County-recognized counseling, educational or other program, within ninety (90) days of receipt of-notice of the violation.
2. A second violation of Section 48-4A by the same responsible person shall make the person responsible for the violation liable for a civil penalty of one thousand (\$1,000.00).
3. A third or subsequent violation of Section 48-4A by the same responsible person shall be punishable by a civil penalty of two thousand dollars (\$2,000.00).

**Sec. 48-5. Administrative Appeal.**

**A.** Any person who violates section 48-4A shall be subject to the civil penalties provided for in section 48-4B and shall also be subject to the administrative appeal procedures set forth below.

**B.** Any person upon whom a civil penalty is imposed pursuant to 48-4B may appeal such civil penalty pursuant to the procedures set forth in this section. The appellant must file a written appeal with the County within ten (10) working days of service of the violation notice or any other date of mailing of a notice of determination of the civil penalty. The written appeal shall contain:

1. A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the civil penalty;
2. A brief statement of the material facts which the appellant claims supports his or her contention that no civil penalty should be imposed or that a civil penalty of a different amount is warranted;

C. An appeal of a civil penalty imposed for violations of Section 48-4A shall be heard by a person appointed by the County to act as the hearing examiner. The civil penalty appeal hearing shall be set no sooner than twenty (20) days and no later than forty-five (45) days following a request for an appeal hearing. Notice of the appeal hearing shall be mailed at least twelve (12) calendar days before the date set for the hearing. Failure to appear timely will cause the civil penalty to become a final order or decision.

D. In reviewing the penalty, the hearing examiner shall consider all facts relating to the issuance of the citation and the reasons therefore and shall uphold the penalty imposed, eliminate the penalty, or modify it. The decision of the hearing examiner shall constitute the final administrative order or decision of the local agency within the meaning of Government Code section 53069.4(b)(1).

E. The hearing examiner shall serve a copy of his or her written decision on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The hearing examiner's decision shall be deemed served within two days after the date it was mailed to the address provided by the appellant.

F. The costs of the administrative hearing may be assessed to the responsible person in addition to any other fines and penalties in the event that the citation is upheld.

#### **Sec. 48-6. Enforcement and Collection of Administrative Fine.**

When a civil penalty becomes a final order under section 48-5 or Government Code section 53069.4, the County may proceed to collect the penalty as set forth in Chapter 24A-8 of this Code.

#### **Sec. 48-7. Judicial Review.**

Any person aggrieved by a final administrative order or decision imposing a civil penalty may seek review with the superior court in Santa Barbara County pursuant to Government Code section 53069.4.

#### **Sec. 48-8. Remedies Cumulative; Actions; Relationship to Other Laws.**

The remedy provided under this chapter is cumulative, and shall not restrict the County to any other remedy to which it is entitled under law or equity. Nothing in this chapter shall be deemed to preclude the imposition of any criminal penalty under state law or the Santa Barbara County Code. Nor shall anything in this chapter be deemed to conflict with any penalty or provision under state law, or to prohibit any conduct authorized by the state or federal constitution.

#### **Section 3. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Santa Barbara County Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause, phrase or portion may be declared invalid or unconstitutional.

#### **Section 4. Effective Date.**

This ordinance, within fifteen (15) days after its passage and adoption, shall be published once in the Santa Barbara News Press and shall be in full force and effect thirty (30) days after its passage and adoption to allow for a period of education.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JANET WOLF  
Chair, Board of Supervisors

ATTEST:

MICHAEL BROWN  
CLERK OF THE BOARD

By \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL  
COUNTY COUNSEL

By   
County Counsel