



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: BOS
Department No.: 011
For Agenda Of: May 5, 2009
Placement: Department
Estimated Time: 2 Hours
Time Certain 1:00 PM
Continued Item: Yes
If Yes, date from: See History
Vote Required: Majority

TO: Board of Supervisors
FROM: Board Member(s) Supervisor Salud Carbajal, 1st District Supervisor
Supervisor Joni Gray, 4th District Supervisor
Contact Info: Susan Paul, Assistant CEO/HR Director 568-2817
SUBJECT: Consider Establishment of a Social Host Ordinance for the County of Santa Barbara

J.P. for S.C.
[Handwritten signatures]

County Counsel Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board conduct a hearing to consider recommendations regarding adding Chapter 48 to the County Code known as the "Santa Barbara County Social Host Ordinance" as follows:

- a) Consider the introduction (first reading) of an Ordinance entitled, "An Ordinance of the Board of Supervisors of the County of Santa Barbara Adding Chapter 48 to Prohibit Underage Drinking," (Attachment A); and
- b) Set a hearing for May 12, 2009 to consider the adoption (second reading) of the Ordinance entitled, "An Ordinance of the Board of Supervisors of the County of Santa Barbara Adding Chapter 48 to the County Code to Prohibit Underage Drinking."

Summary Text:

On May 20, 2008, the Board of Supervisors approved policy direction to establish a countywide Social Host Ordinance and directed staff to take the necessary steps to return with a draft Social Host Ordinance for the Board's consideration.

Social Host Ordinances hold individuals (parents and/or other adults such as older siblings) responsible for underage drinking occurring on residential property they own, rent, lease, or otherwise control. While laws prohibiting furnishing alcoholic beverages to underage persons target those who provide alcoholic beverages to underage persons, social host liability laws target those who provide the *venue* at which underage drinking occurs.

While there are misdemeanor underage drinking laws (ie: furnishing alcohol to a minor), Social Host Ordinances supplement existing laws, are within law enforcement powers, and do not conflict with underage drinking laws. Relevant statutes concerning underage drinking are contained in the California Business and Professions Code §25658 and §25662 (Attachment B). Social Host Ordinances give law enforcement an additional tool to control underage drinkers and allows them to deal with private parties where underage drinking occurs. The proposed Social Host Ordinance does not affect law enforcements' responsibility to enforce existing laws or allow greater access to people's places of residence than otherwise exists under State law.

More than 150 cities and/or counties and approximately 24 states have adopted Social Host Ordinances. In Santa Barbara County, the Cities of Carpinteria and Santa Barbara have adopted Social Host Ordinances. In Ventura County, the County and all ten cities within the County have adopted Social Host Ordinances and the City of San Luis Obispo has also adopted an Ordinance.

The proposed Social Host Ordinance for the County of Santa Barbara is a countywide ordinance covering the unincorporated areas of the County.

Background:

State and local communities across the nation are working to implement regulations, statutes, and ordinances that address the complex issues surrounding underage drinking. The reasons for this movement are many:

- 1) Alcohol is the drug of choice for youth ¹ and the leading cause of death among teenagers.² The 2003 National Survey on Drug Use and Health reports approximately 10.9 million persons aged 12 to 20 drank alcohol in the month prior to the survey (29% of

¹ Teen Tipplers: America's Underage Drinking Epidemic (2002)
National Center on Addiction and Substance Abuse

² American Medical Association, Office of Alcohol/Drug Abuse (2001)

this age group). Nearly 7.2 million (19.2%) were binge drinkers and 2.3 million (6.1%) were heavy drinkers.³

- 2) Alcohol is involved in the deaths of more teens than all other illicit drugs combined by a four-to-one ratio.⁴ Underage drinking is a factor in nearly half of all teen automobile crashes and 50 to 65 percent of youth suicides.⁵
- 3) Alcohol abuse is linked to as many as two-thirds of all sexual assaults and date rapes of teens and college students and it contributes significantly to homicides, suicides, and fatal injuries.² It is a major factor in unprotected sex among youth.²
- 4) According to the National Institute of Health, youth who drink before they turn 15 are far more likely to develop alcohol addiction than those who start drinking at 21.⁵
- 5) Studies indicate that most underage drinking does not occur in commercial establishments.⁶ In fact, at the local and national levels, house parties have repeatedly been identified as the primary source through which youth gain access to alcohol.^{6,7}
- 6) National research shows that approximately 51% of minors reported drinking at friends' houses.⁶

Impacts of Underage Drinking on Adolescents:

While many believe underage drinking is an inevitable "rite of passage" from which adolescents can easily recover because of their resilience, the exact opposite is true. The brain changes dramatically during adolescence and growth can be seriously inhibited by alcohol consumption. The damage alcohol can cause to the adolescent brain is often long-term and irreversible. Even short-term, moderate drinking impairs learning and memory far more among youth than adults.⁸ Adolescents need to drink only half as much to suffer the same negative side effects.⁹

³ National Institute on Alcoholism and Alcohol Abuse

⁴ Drug Strategies, 1999

⁵ Grant, B.F., and Dawson, D.A. (1997) "Age of Onset of Alcohol and Its Association Within DSM-IV Alcohol Abuse and Dependence: Results from the national Longitudinal Alcohol Epidemiologic Survey." *Journal of Substance Abuse*, 9:103-110

⁶ Pacific Institute for Research on Evaluation (1999.) *A Practical Guide to Preventing and Dispensing Underage Drinking Parties*. Phone (877) 355-1287

⁷ Mayer, R.R., Forsten, J.C., Murray, D.M., and Wagner, A.C. (1998). *Social Settings and Situations of Underage Drinking: Journey of Studies on Alcohol*, 59 (2), 207-215

⁸ Brown, S.A., Tapert, S.F., Granholm, E&Dells, D.C. (2000). "Neurocognitive Functioning of Adolescents: Effects of Protected_Alcohol Use." *Alcoholism: Clinical and Experimental Research*, 24 (2) 164-171

⁹ Pyapall, G.K, Turner D.A., Wilson, W.A. & Swartzwelden, S.H. (1999). "Age and Dose Dependent Effects of Ethanol on the Induction of hippocampal Long-Term Potentiation." *Alcohol* 19(2): 107-11

A Practical Guide to Preventing and Dispersing Underage Drinking Parties (PIRE, undated)⁶ articulates why regulating underage drinking parties and other gatherings is an important priority and why social host liability laws should be considered an essential law enforcement strategy for deterring these gatherings:

“Many people dismiss underage drinking as a normal ‘rite of passage’ in adolescence. However, it is important to remember that alcohol is one of the most common contributors to injury, death, and criminal behavior among youth (US Department of Health and Human Services, 1992). Underage alcohol use can have immediate and potentially tragic consequences as well as long-range harmful consequences, such as increased risk for chronic addiction (grant and Dawson, 1977). Enforcement activities to limit youth access to alcohol are critical to reducing underage drinking and its often tragic consequences.”

Additional factors that contribute to youth alcohol consumption include:

- Weak or non-existent alcohol laws and policies;
- Easy access to alcohol;
- Inconsistent enforcement of laws and policies;
- Alcohol advertising and promotion;
- Lack of perceived risk and understanding of alcohol problems; and
- Community norms that are tolerant of underage drinking.

Social Host Ordinances can play a big role in addressing these factors and can contribute to lessening the impact of underage drinking on adolescents in the community.

Youth Drinking - Community Impacts:

There are significant community impacts related to underage drinking. For instance, the economic cost of alcohol use by youth in California including traffic crashes, violent crimes, burns, drowning, suicide attempts, fetal alcohol syndrome, alcohol poisoning, and treatment is more than \$6.5 billion per year.⁶ Additionally, The National Academies Institute of Medicine’s seminal report entitled, *Reducing Underage Drinking: A Collective Responsibility* released in 2003, documents the wide ranging and devastating consequences of adolescent and young adult consumption of alcoholic beverages, estimating the national annual cost of underage drinking to be at least \$53 billion. *Reducing Underage Drinking* urges states and localities to enact comprehensive strategies to reduce underage alcohol consumption. These strategies include strengthening social host liability laws to deter underage drinking parties and other gatherings.

Santa Barbara County Statistics and Information

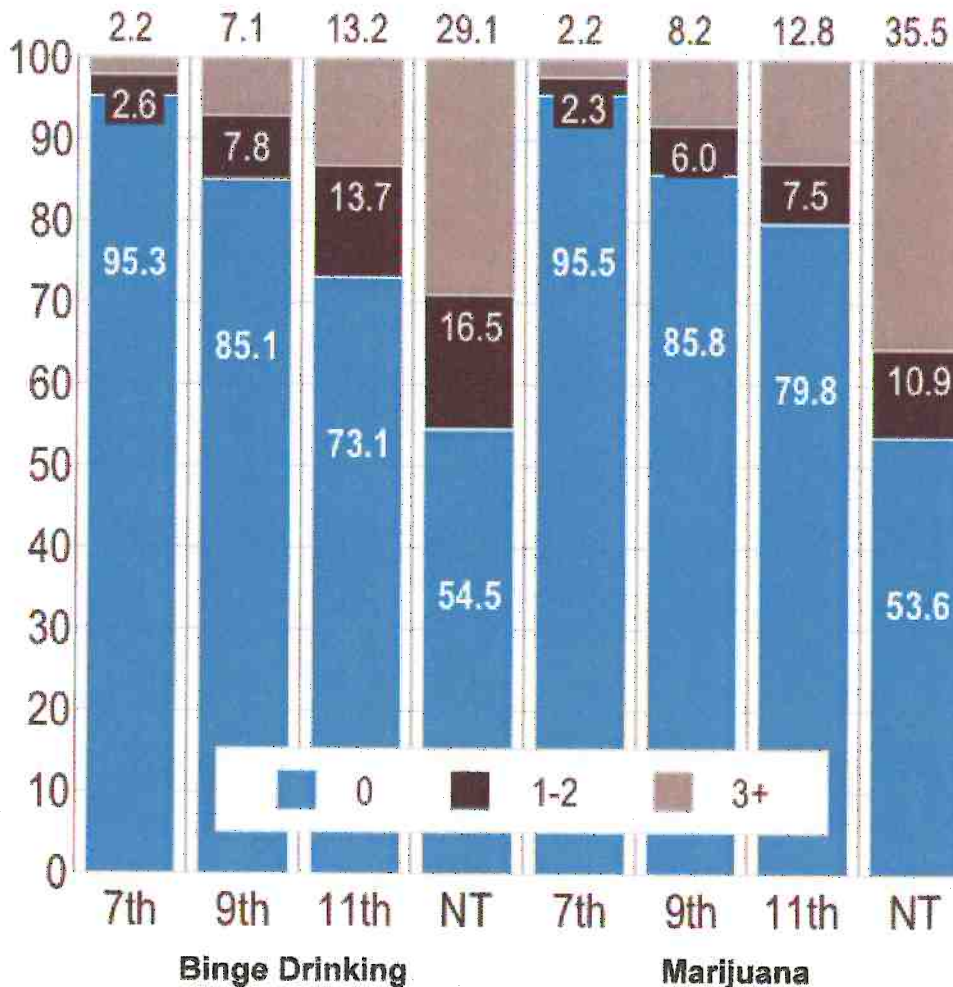
Locally, California Healthy Kids data gathered from 7th, 9th, and 11th graders throughout the County show that alcohol remains a serious issue. In 2004, 35% of 11th graders reported obtaining alcohol at parties where parents were present. In 2006, 37.7% reported drinking alcohol at home. In focus groups conducted by Santa Barbara City Alcohol and Drug Prevention Programs, 91% of teens admitted that "home" is the number one place to obtain and consume alcohol. Additionally, adolescent participation in alcohol and drug treatment programs throughout the County has continued to climb from 363 youth in 1999 to 1,772 in 2004, indicating that alcohol and other drug use is a significant problem among the local youth population.

The Alcohol, Drug, and Mental Health Services Department (ADMHS) also tracks alcohol and substance abuse patterns among the County's youth. Data supplied by ADMHS reveals that both 9th graders and 11th graders report using alcohol to a significantly greater degree than marijuana:

Substance	9th Graders	11th Graders
Alcohol Use (Lifetime)	26%	45%
Marijuana Use (Lifetime)	17%	29%

The following chart provided by ADMHS provides a more in-depth comparison of alcohol and marijuana use among Santa Barbara 7th, 9th, and 11th graders as well as those in non-traditional schools and shows the growth in use from 7th grade to 11th grade:

Percent of Students Reporting Binge Drinking and Marijuana Use (Past Month) by Grade and Number of Days of Use (NT = Non-Traditional School)



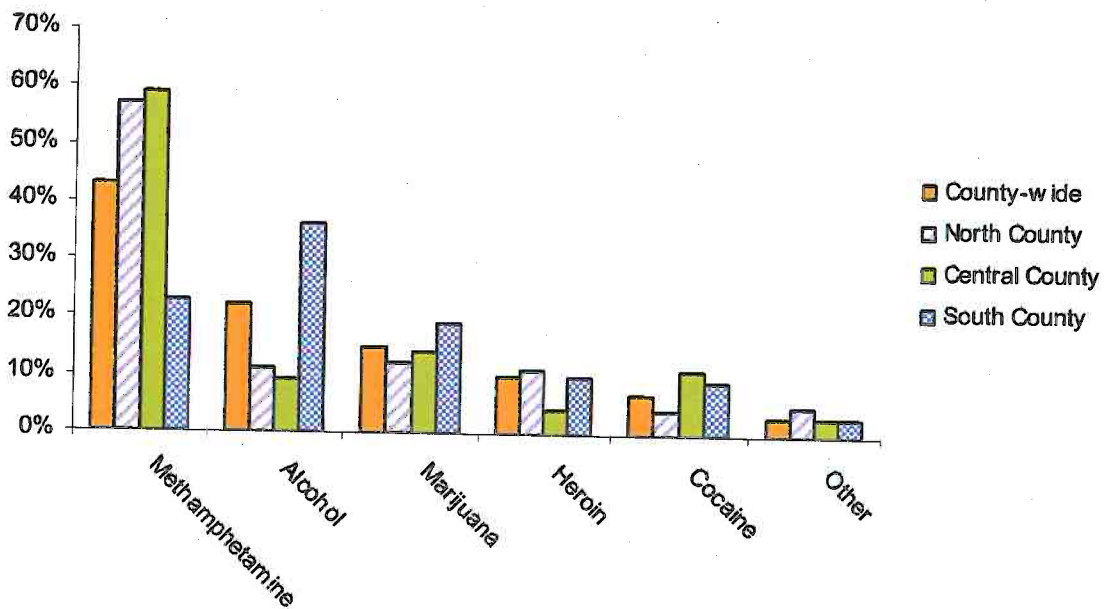
Taken from: Santa Barbara County's Children's Scorecard, 2006.

Website: <http://www.countyofsb.org/kidsnet/documents/Scorecards/2006-Scorecard.pdf>

The number one setting for underage drinking and/or binge drinking remains "the home." Local surveys done with youth throughout Santa Barbara County show that young people not only drink in the home setting (i.e. at parties), but report that alcohol is easily accessible in the home setting. Many of the youth surveyed said parties were unsupervised or, if there was supervision, parents tolerated underage drinking. ADMHS data confirms the most common source for obtaining alcohol is the home:

Source of Alcohol	9th Graders	11th Graders
Home	20%	24%
Parties	5%	4%
Friends	8%	7%

Additionally, the following ADMHS data shows alcohol and drug use in Santa Barbara County:



ADMHS reports that over 80% of all adolescent clients report using alcohol and that there are a significant number of minor clients in County alcohol abuse treatment programs:

County Region	# of Minor Clients
Central	53
South	415
North	45
Total	513

Another key indicator for Santa Barbara County is derived from data provided by the Santa Barbara County Sheriff's Department. It depicts alcohol-related arrests or citations issued in

2008. (The numbers do not include warnings or the number of parties which law enforcement dispersed.)

Code Violation	Violation	# of Violations
25662 B&P*	Minor Possession of Alcohol	1,490
25658 B&P	Furnish Alcohol to Minor	49
647 (F) PC**	Public Intoxication	1,293
23152 VC***	Drunk Driving	412
36-3 County Ordinance	Open Container in Public	740
24-34 County Ordinance	Public Urination	225
40-2 County Ordinance	Amplified Music After Hours	328
415 PC	Disturbing the Peace	261

* Business & Professions Code

** Penal Code

*** Vehicle Code

How a Social Host Ordinance Can Help:

According to current research, social host liability laws are among the most effective forms of public policy in reducing binge drinking and drinking and driving.¹⁰ By addressing the illegal and unsafe supply of alcohol to youth, lawmakers and courts around the country are recognizing that underage drinking is a serious threat to the health and safety of their communities and are taking steps to reduce it. In fact, social host liability laws are being implemented across the nation to impose civil penalties, usually in the form of monetary damages. Arizona, Alabama, Florida, Kansas, Illinois, Michigan, Maryland, Pennsylvania, New Jersey, Massachusetts, Maine, South Carolina, Oregon, Washington, Ohio, New Hampshire, and Hawaii all impose criminal liability for hosting underage drinking parties.¹¹ Delaware, Georgia, Idaho, Indiana, North Carolina, New Mexico, and Vermont have also implemented Social Host laws. A listing of Social Host Ordinances in California is contained in Attachment C.

Generally, Social Host Ordinances contain several key elements:

- The ability for law enforcement to issue a citation with fines attached to any host who permits underage drinking in his or her home;
- Escalating fines for repeat offenders; and
- Defining unlawful gatherings on private property where alcohol is served to minors.

¹⁰ Stout, E.M., Sloan, F.A., Liang, L.&Davies, H.H. (2000). "Reducing Harmful Alcohol-Related Behaviors:Effective Regulatory Methods. " Journal of Studies on Alcohol.

¹¹ Prichard, O. (March 31, 2003). "A Growing Number of States Seek to Send a Strong Message That Prison Time Will Result." Philadelphia Inquirer.

Ordinances may slightly differ between jurisdictions with variances in fines, what constitutes a loud or unruly gathering, and whether or not law enforcement can recover service costs.

While Social Host Ordinances are relatively new and not much evaluative data is available, existing research shows that social host policies are the most effective tools for reducing binge drinking and drinking and driving (*Journal of Studies on Alcohol*, 2000). In addition, according to Detective Larry Darwent (*CARS*, 2004), San Diego Police Department saw a reduction in home party calls around San Diego State University when their ordinance went into effect. Since many of these ordinances have been enacted within the last five years, it is anticipated that greater research will be forthcoming in the years ahead.

All ten cities in Ventura County and its unincorporated areas have social host liability laws. Their ordinances went into effect in 2006 and 2007. The Sheriff's Department and city police departments wrote more than 63 citations when the first ordinance went into effect in 2006 and their data indicates issuing social host citations has acted as a deterrent to underage drinking in Ventura County communities.

County of Santa Barbara – Draft Social Host Ordinance:

The effort to develop a Social Host Ordinance for the County of Santa Barbara stemmed from growing community concerns with underage drinking in the County. Community organizations, including the Fighting Back Steering Committee and the Fighting Back Public Policy Task Forces in Santa Barbara and Santa Maria and many others surfaced these concerns.

The one-year process to develop the draft Ordinance for Santa Barbara County included meetings with an extensive number of stakeholder groups, individual members of the community, and included working closely with County Counsel, the Sheriff, ADMHS, and other key departments, and obtaining input from landlords in the community, UCSB students, and others.

In addition to the involvement of other County departments, the Public Defender's input was also sought. Correspondence was received from the Public Defender on April 30, 2009 (Attachment D). County Counsel has reviewed the Public Defender's correspondence and does not share his concerns. County Counsel's response can be found in Attachment E.

Five drafts of the Ordinance were produced over the year and each draft was sent to stakeholders and interested parties. While not all feedback received was incorporated, significant changes were made to the Ordinance over the drafting period. The draft Ordinance for Santa Barbara County is generally consistent with the Cities of Santa Barbara's and Carpinteria's.

The key elements of the County of Santa Barbara Draft Social Host Ordinance are as follows:

- Defines a party, gathering, or event subject to the Ordinance;

- Defines the adult(s) held responsible for underage drinking at such parties, gatherings, or events;
- Defines juveniles and minors covered by the Ordinance;
- Prohibits “unlawful gatherings” where alcoholic beverages are in the possession of, or consumed by, any minor;
- Describes penalties for violations of the Ordinance which includes civil penalties:
 - First violation - \$250, which may be waived upon submission of proof of completion of a County-recognized counseling, educational, or other program within 120 days of receipt of the notice of violation;
 - Second violation - \$500, which may be reduced to \$250 upon submission of proof of completion of a County-recognized counseling, educational, or other program within 120 days of receipt of the notice of violation;
 - Third violation - \$1,000
- Provides an administrative appeal process for the Violation and for Civil Penalties
- Provides for a judicial review of the final administrative order or imposition of Civil Penalty

The following chart depicts the similarities between the Ordinances put into effect by the County of Santa Barbara, the County of Ventura, the City of Santa Barbara, and the City of Carpinteria:

Ordinance Elements	Santa Barbara County	Ventura County	City of Santa Barbara	City of Carpinteria
Defines a “gathering” subject to the Ordinance, including the number of participants	5 or more	2 or more	5 or 2 or more minors	2 or more
Defines adults responsible for underage drinking	X	X	X	X
Defines juveniles/minors covered by Ordinance	X	X	X	X
Prohibits gatherings in which minors possess or consume alcohol	X	X	X	X
First Violation Civil Penalties	\$250	\$1000*	\$1000	\$500
Second Violation Civil Penalties	\$500	\$1000*	\$2000	\$1000
Third Violation Civil Penalties	\$1000	\$1000*	\$2000	\$1000
Rolling/cumulative fine schedule	X	X	X	X
Response/Recovery Costs		X		X
Penalties for Underage Persons		X		
Provides process for waiver or reduction of Civil Penalties for completion of counseling/educational program	X		X	X
Provides administrative appeal process	X	X	X	
Provides for judicial review	X	X		

* \$1000 for each occurrence to any/all responsible individuals, including minors

Conclusion:

Alcohol-related statistics furnished by ADMHS and the Sheriff's Department provided earlier in this Board Letter demonstrate significant alcohol-related incidents occurring throughout the County, and California's Healthy Kids data shows significant growth in adolescent alcohol abuse and participation in alcohol and drug programs in Santa Barbara County.

These and other data support the need for a Social Host Ordinance for Santa Barbara County. Current laws have not sufficiently addressed the issue of underage drinking. A Social Host Ordinance can serve as a deterrent to uncontrolled house parties and the resulting problems and can reinforce community norms that define underage drinking as unacceptable in the community. It will give law enforcement a new and potentially more effective tool to deal with underage drinking at private parties where underage drinking occurs.

Attachments:

- Attachment A -** Draft Social Host Ordinance: An Ordinance of the Board of Supervisors Adding Chapter 48 to the Santa Barbara County Code to Prohibit Underage Drinking
- Attachment B -** Relevant Statutes of the California Business and Professions Code, §25658, and §25662
- Attachment C -** Listing – Social Host Ordinances
- Attachment D -** April 29, 2009 Correspondence from the Public Defender
- Attachment E -** May 1, 2009 Correspondence from County Counsel
- Attachment F -** December 2007 Correspondence from North/South Fighting Back

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS ADDING CHAPTER 48 TO THE SANTA BARBARA COUNTY CODE TO PROHIBIT 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 loud or unruly gatherings on private property 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 the loud or unruly gatherings on private property 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 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 unruly gathering;
- (e) Control of 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) Persons held responsible for causing or abetting loud or unruly gatherings will be more likely to properly supervise or stop such conduct at gatherings held on property under their control;
- (g) Law enforcement, fire and other emergency response services personnel responding to such 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 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 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.

B. PERSON. Includes, but is not limited to:

1. the person who owns, rents, leases, or otherwise has control or is in charge of the premises where the party, gathering, or event takes place, irrespective of whether such person knew of the event or knew or intended that alcohol beverages would be possessed or consumed by minors during the party, gathering, or event;

2. the person who organized the party, gathering, or event; or

3. if the person who organized the party, gathering, or event is a juvenile, then both the parents (or legal guardians) of that juvenile and the juvenile shall be considered "persons" and, as such, shall be jointly and severally liable for the civil penalties imposed pursuant to this chapter, irrespective of whether the parent(s) (or legal guardians) knew of the party, gathering, or event, or knew or intended that alcohol beverages would be possessed or consumed by minors at the party, gathering, or event.

C. JUVENILE. Any minor child under the age of 18 years.

D. MINOR. Any person under the age of 21 years.

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

A. Unlawful Gatherings. No person shall permit, allow, or host a party, gathering, or event at his or her place of residence (or other private real property under his or her ownership or control) where alcoholic beverages are in the possession of, or consumed by, any minor.

B. Host Presumption. It is presumed that the owner of the private real property on which the party, gathering, or event occurs is a person who has permitted, allowed, or hosted the party, gathering or event, unless the private real property is rented, in which case it is presumed that the tenant has permitted, allowed, or hosted the party, gathering, or event.

C. 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 real property under his or her ownership or control) where alcoholic beverages are in the possession of, or are being consumed by, any minor.

48-4. Violation and Penalty.

(A). Violation. Any person who permits, allows, or hosts a party, gathering, or event at his or her place of residence (or other private property under his or her control) where alcoholic beverages are in the possession of, or are being consumed by, any minor in violation of this chapter 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

(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 two hundred fifty dollars (\$250.00); provided however, the civil penalty for such responsible persons who are first time offenders of Section 48-4A may be waived upon submission of proof of completion, within one hundred twenty (120) days of receipt of notice of the violation, of a County-recognized counseling, educational or other program, as such programs may be designated in writing by the County from time to time.

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 five hundred dollars (\$500.00); provided however, the civil penalty for such responsible persons who are second time offenders of Section 48-4A may be reduced to two hundred fifty dollars (\$250.00) upon submission of proof of completion, within one hundred twenty (120) days of receipt of notice of the violation, of a County-recognized counseling, educational or other program, as such programs may be designated in writing by the County from time to time.

3. A third or subsequent violation of Section 48-4A by the same responsible person shall be punishable by a civil penalty of one thousand dollars (\$1,000).

C. If a responsible person wishes to have a penalty waived or reduced pursuant to Paragraphs B.1 or B.2 above, the responsible person shall submit to the County evidence of enrollment in a recognized counseling, education or other program within four (4) weeks of receipt of notice of the violation. Furthermore, if the program lasts longer than four (4) weeks, the responsible person shall submit evidence of continued enrollment every two (2) weeks until completion of the program.

Sec. 48-5. Administrative Appeal.

A. A violation of 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 Sheriff's Department 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.

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.

PASSED AND ADOPTED this _____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

Chair, Board of Supervisors

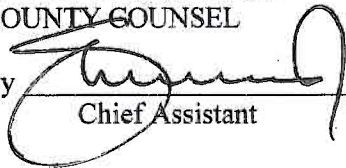
ATTEST:

MICHAEL BROWN
CLERK OF THE BOARD

By _____
Deputy

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By  _____
Chief Assistant

California Business and Professions Code Section 25658**25658. Providing alcoholic beverages to persons under the age of 21; prohibition; criminal punishment; law enforcement decoys; additional punishment**

25658. (a) Except as otherwise provided in subdivision (c), every Person who sells, furnishes, gives, or causes to be sold, furnished, Or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars (\$1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of one thousand dollars (\$1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given to licensees and the department within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 272 of the Penal Code and Section 13202.5 of the Vehicle Code.

California Business and Professions Code Section 25662

25662. Possession of beverage by minor; authorization of peace officers to seize beverages; disposition of seized beverages

25662. (a) Any person under the age of 21 years who has any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public is guilty of a misdemeanor and shall be punished by a fine of two hundred fifty dollars (\$250) or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school. A second or subsequent violation shall be punishable as a misdemeanor and the person shall be fined not more than five hundred dollars (\$500), or required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the

violation occurred or where the person resides. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his or

her parent, responsible adult relative, or any other adult designated by the parent or legal guardian, or in pursuance of his or her employment. That person shall have a complete defense if he or she was following, in a timely manner, the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(b) Unless otherwise provided by law, where a peace officer has lawfully entered the premises, the peace officer may seize any alcoholic beverage in plain view that is in the possession of, or provided to, a person under the age of 21 years at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 years are participating, persons under the age of 21 years are consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

Where a peace officer has seized alcoholic beverages pursuant to this subdivision, the officer may destroy any alcoholic beverage contained in an opened container and in the possession of, or provided to, a person under the age of 21 years, and, with respect to alcoholic beverages in unopened containers, the officer shall impound those beverages for a period not to exceed seven working days pending a request for the release of those beverages by a person 21 years of age or older who is the lawful owner or resident of the property upon which the alcoholic beverages were seized. If no one requests release of the seized alcoholic beverages within that period, those beverages may be destroyed.

(c) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 13202.5 of the Vehicle Code.



Your results on social host laws in CALIFORNIA

Legend: M = Misdemeanor I = Infraction V = Violation O = Offense

Location Type	County	MUV O	Criminal Citation	Incarceration	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
City	Bericia (Approved 8/13/07)				\$750, first violation, \$1,500, 2nd violation, \$2,500 3rd or subsequent violation.	X	Community service, training or counseling may be required.					
City	Agoura Hills (Eff. 5/9/07)				Up to \$500, 1st offense; up to \$750, 2nd offense; up to \$1000, 3rd offense. (By resolution adopted 6/27/07.)		(By resolution adopted 6/27/07.)					
City	Berkeley Specific SHO (Eff. 4/26/07)	I or M, in court's discretion			\$250 for 1st violation, higher fine for subsequent violations	X				X		
City	Berkeley Loud or Unlawful Gathering SHO (1993)				\$0 for 1st violation, \$500 for 2nd violation, \$1,500 for 3rd violation, \$2,500 for 4th or subsequent violation.	X		Posting of notice on premises. Removal or defacement of notice results in \$100 civil fine.				
City	Camarillo				\$500 for 1st offense and/or counseling program, \$1000 for 2nd offense and/or counseling program, \$2,500 for 3rd offense.	X		Counseling program in lieu of fine				



Your results on social host laws in CALIFORNIA

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Location Type	County	M/I/V/O	Criminal Citation	Incarceration	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
City	Carpihente (2007)				\$500 for 1st offense and/or counseling program, \$1000 for 2nd offense and/or counseling program, \$1000 for 3rd offense	X		Counseling program in lieu of fine				
City	El Cajon (2003)	I or M	(reference to general provisions in municipal code)	(reference to general provisions in municipal code)		X					X	
City	Encinitas	M	\$1,000	Up to 6 months' imprisonment.								
City	Escondido (Adopted 2003, revised 7/07)	M	\$1,000	Up to 6 months' imprisonment.		Up to \$1,000 per incident.					X	
City	La Mesa (Revised 9/26/06.)	M	\$1,000	Up to 6 months' imprisonment.		X	Not less than 24 hours.	Restates potential for damages under Civil Code section 1714.1 and general negligence standards.			X	
City	La Puente (1999)	M	Up to \$1,000	Up to 6 months' imprisonment.		For 2nd response, maximum penalty of \$600. For 3rd response and beyond, actual		Reference to public nuisance provisions found elsewhere in city code.				



Your results on social host laws in CALIFORNIA

Legend: M = Misdemeanor I = Infraction V = Violation O = Offense

Location Type	County	M/W/O	Criminal Citation	Interpretation	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
City	Los Altos	M	(reference to general provisions in municipal code)	(reference to general provisions in municipal code)								
City	(Town of) Los Gatos (Approved 5/1/89)	M		X								
City	(Town of) Mammoth Lakes (2006)	M	\$1,000	Up to 6 months' imprisonment.	\$500 for 1st violation, \$1,000 for 2nd or subsequent violation.	X			X	X	X	
City	Manhattan Beach (eff. 3/20/07)				\$1,000 for 1st violation, \$2,000 for 2nd violation w/ 12 months, \$5,000 for 3rd violation w/ 12 months.	X						
City	Madesto (eff. 4/27/07)	X	X	X	\$500 minimum penalty for 1st offense, \$1000 for 2nd offense, \$1500 for 3rd offense in 12 month period.	X		X	X	X	X	



Your results on social host laws in CALIFORNIA

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Location Type	County	M/W/V/O	Criminal Citation	Incarceration	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
City	Moortpark (2006)				\$1,000	X						
City	Newman (Approved 8/14/07)				\$500 minimum penalty for 1st offense, \$1,000 for 2nd offense, \$1,500 for 3rd offense in 12 month period.	X		X			X	
City	Novato	M	(reference to general provisions in municipal code)	(reference to general provisions in municipal code)						X		
City	Oceanside (revision eff. 4/4/07)	M	\$1,000 fine	Up to 6 months' imprisonment.		X				X	X	
City	Ojai				X	X						
City	Oxnard (eff. 2007)				X	X						
City	Petaluma (2006 ordinance)	I or M	Up to \$1,000 if treated as misdemeanor. Up to \$500 if treated as infraction.	Up to 6 months' imprisonment if treated as misdemeanor.	X	X				X	X	
City	Port Hueneume (Adopted 8/8/07; eff. 9/7/07)	I or M For 3+ violations w/ pd., M.				X		Procedures for emergency abatement may be used.		X	X	



Your results on social host laws in CALIFORNIA

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Location Type	County	M/V/O	Original Citation	Interpretation	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
City	Poway	I or M	(reference to general provisions in municipal code)	(reference to general provisions in municipal code)		X						
City	Santa Barbara											
City	San Diego (added 5-6-2003 by O-19172 N.S.) (Amended 4-26-2006 by O-19482 N.S.; effective 5-26-2006)		\$100 minimum fine for 1st offense. \$200 minimum fine for 2nd and subsequent offenses.		X	X				X	X	
City	San Marcos (Adopted 2/14/06)	I				X				X		
City	Santa Cruz (eff. 7/30/05)	I or M	\$250 fine for 1st violation (I). \$500 fine for 2nd violation w/ 12 months (I). \$1,000 for 3rd or subsequent violation w/ 12 months (M).		X	X						
City	Santa Paula (Adopted 8/7/06; eff. 9/7/06)	I or M. For 3+ violations w/ 12 mo. pd., M.				X		Procedures for emergency abatement may be used.		X		
City	Santa Rosa (1992)					X						



Your results on social host laws in CALIFORNIA

Legend: M = Misdemeanor I = Infraction V = Violation O = Offense

Location Type	County	MHV/O	Criminal Citation	Incarceration	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
City	Santee		\$1,000	Up to 6 months' imprisonment.		X	City	Santee		\$1,000		
City	Sirri Valley				Civil penalty of \$1,000.	X	X					
City	Thousand Oaks				\$2,500 for 1st violation or any subsequent violation w/ first 24 hours. \$3,500 for 2nd w/ 1st year but outside 24 hour period after 1st violation. \$5,000 for 3rd or subsequent violation w/ 1st year.	X	X					
City	Vallejo (1999)					Maximum \$600 fine.						
City	Ventura (Adopted June 18, 2007.)				Fines determined by resolution.	X						
City	Vista (Adopted 10/14/03)	I or M	(reference to general provisions in municipal code)	(reference to general provisions in municipal code)							X	
City	Waterford (Adopted 5/17/07)	M			\$500 minimum penalty for 1st offense, \$1,000 for 2nd offense, \$1,500 for 3rd offense in 12 month period.	X			X		X	



Your results on social host laws in CALIFORNIA

Legend: M = Misdemeanor I = Infraction V = Violation O = Offense

Location Type	County	M/I/V/O	Original Citation	Incarceration	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
County	Contra Costa (1991)					Shall not exceed \$500 for single gathering.						
County	Marin County (2006)				\$750, 1st violation. \$1,500, 2nd violation. \$2,500, 3rd or subsequent violation.	X				X		
County	Mono (2006)		X	Up to 6 months' imprisonment.	\$500 civil fine, 1st violation. \$1,000 civil fine, 2nd or subsequent violation.	X				X	X	
County	Ventura				\$1,000 penalty	X						
County	San Diego (passed 7/25/06)		\$1,000 minimum fine for 1st offense. \$200 minimum fine for 2nd and subsequent offenses.	X	6 mos to 1 year if minor's consumption caused great bodily harm.	X				X	X	
City	Gilroy				1st Offense \$250 penalty, 2nd Offense within 12 months \$1,000 penalty, 3rd or subsequent violation within 12 months \$2000 penalty	Not to exceed \$500				X		

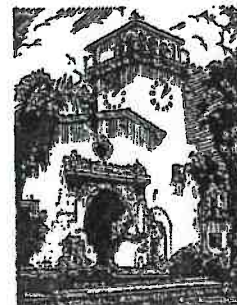


Your results on social host laws in CALIFORNIA

Legend: M = Misdemeanor I = Infraction V = Violation O = Offense

Location Type	County	M/V/I/O	Criminal Citation	Imprisonment	Civil or Administrative Citation	Civil Response Costs	Community Service	Other Penalty	Special Fund	Knowledge	Knew or Should Have Known	Uninvited Guest Defense
City	Hayward				1st Offense \$750, 2nd Offense \$1,500, 3rd Offense \$2,500		Community service may be imposed in addition to or in lieu of civil fines and/or response costs	Training, counseling, or classes may be imposed in addition to or in lieu of civil fines and/or response costs				
City	Mission Viejo	M	\$1,000 maximum	Not more than 6 months imprisonment						X		
City	Morgan Hill	M	\$1,000 maximum	Not more than 6 months imprisonment	The civil fine is regardless of whether person knew or should have known, 1st Offense \$250, 2nd Offense \$500, 3rd and subsequent Offense \$1,000	The response cost is regardless of whether person knew or should have known					X	

Memorandum
Office of the Public Defender
County of Santa Barbara



Date: April 29, 2009
To: Sue Paul, Assistant CEO/HR Director
From: Gregory C. Paraskou, Public Defender
Re: Social Host Ordinance - 4th Draft

Thank you again for the opportunity to comment on the proposed Social Host Ordinance (4th Draft). While some of the changes resolve some of our concerns reflected in our Memo of October 17, 2008, some still exist and some new ones have arisen. It remains our view that the Ordinance is unnecessary and should not be adopted.

First, we still believe that current laws are more than adequate to meet the concerns raised. As set forth in our previous Memo, Penal Code sections 272, 370 et. seq., 415 and 416, and Business and Professions Code section 25662 provide adequate legal authority to arrest and prosecute a variety of unlawful behaviors.

A second concern is the inconsistency in the term "public nuisance." Throughout Section 1, the Findings repeatedly refer to "loud and unruly gatherings" as the concern at which the proposed Ordinance is aimed. However, in section 47-3.C., a public nuisance is broadly defined as any party or gathering without regard to the more narrow stated findings of punishing "nuisances created by loud and unruly gatherings." This broad definition gives rise to concerns that it is so broad and vague as to result in an unconstitutional piece of legislation which seeks to punish a wide-array of behavior beyond that which may actually involve a threat to public health, safety, and the quiet enjoyment of residential property. For example, a 16 year-old opening a bottle of wine at the family holiday dinner would appear to be a violation of the Ordinance. The same would be true if parents allowed their 20 year-old child to have a glass of wine at that same holiday dinner. Is that what this Ordinance is intended to do?

Moreover, the Ordinance may well be unconstitutional under the doctrine of state preemption. Generally speaking, when state law has been enacted to cover a particular subject, a local entity loses the ability to legislate in the same area. For example, a Los Angeles ordinance prohibiting intoxication in a public place was found to be unconstitutional because Penal Code section 647(f) already preempted the issue. (*In re Koehne* (1963) 59 Cal.2d 646.) Similarly, ordinances aimed at forbidding possession of alcohol, have also been declared unconstitutional under the preemption doctrine. (*People v. Ramirez* (1994) 25 Cal.App.4th Supp 1.)

Date: April 29, 2009
To: Sue Paul, Assistant CEO/HR Director
From: Gregory Paraskou, Public Defender
Re: Social Host Ordinance/4th Draft
Page: Page 2

The doctrine of preemption is a complex one and this is not intended to be a thorough legal analysis of the issue, but only to point out that there may be potential concerns to consider.

Penal Code section 370 defines a public nuisance as follows: "Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a public nuisance." As can be seen, the definition contained in the proposed Ordinance is much narrower, punishing behavior that might otherwise be lawful.

Furthermore, in Draft #2, there were exceptions to the Ordinance's application in situations where the conduct (1) was permitted under Article 1, Section 4 of The California Constitution or otherwise under California Law; (2) involves the use of alcohol or alcoholic beverages which occurs exclusively between a minor and his or her parent or legal guardian; or (3) occurs at any location or place regulated by the California Department of Alcohol and Beverage Control. These exceptions are no longer present in the current draft, and in our view should be reinstated.

Additionally, the latest draft does not address the concerns we raised in our previous Memo relating to Cost Concerns and Fairness Concerns. For your convenience, they are re-stated here.

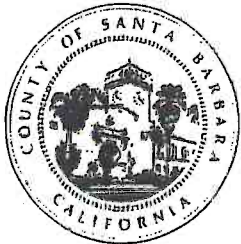
We are unaware of any cost analysis relating to this proposed Ordinance. Given the current financial realities the County faces, such an analysis needs to be done. For example, the following costs need to be looked at.

- (1) The computative and billing process set out in Section 47-6.
- (2) Administrative Appeal procedures contained in Section 47-5, including the cost of the Hearing Examiner.
- (3) Judicial review as contained in Section 47-7 including the cost of representing the County.
- (4) Are there provisions for interpreters for non-English-speaking individuals, and what would the costs be.

Finally, we are concerned that the Hearing Examiner will be appointed by (and presumably paid by) the County (Section 47-5(c)). It seems to violate basic fairness to allow one party in an action to be able to choose the judge and upon whom the judge is dependent for pay and perhaps future business. I would think that if it were the opposite – the person fined gets to pick the Hearing Examiner – the County would not feel comfortable.

Date: April 29, 2009
To: Sue Paul, Assistant CEO/HR Director
From: Gregory Paraskou, Public Defender
Re: Social Host Ordinance/4th Draft
Page: Page 3

We remain of the opinion that the proposed Social Host Ordinance is unnecessary, deeply flawed, and potentially costly to the County, and would recommend that it not be adopted. We appreciate the County seeking our input in this important community issue. If you have any questions or would like to discuss this matter further, please call me at any time.



**COUNTY COUNSEL
OFFICE MEMORANDUM**

Stephen D. Underwood
Chief Assistant County Counsel

**Telephone: (805) 568-2950
FAX: (805) 568-2982**

May 1, 2009

To: Gregory C. Paraskou, Public Defender

Subject: Social Host Ordinance

CC: Sue Paul, Assistant CEO/HR Director

County Counsel has been asked to respond to your April 29, 2009 Memorandum to Sue Paul regarding the proposed Social Host Ordinance (SHO).

To make sure you have the proposed ordinance, we have attached a copy.

Your first concern is that there are existing statutes that address the subject matter in the ordinance. There are existing "criminal" laws designed to prevent the kind of behavior you mentioned, such as contributing to the delinquency of a minor, public nuisance, disturbing the peace and minor possessing alcohol. However, the SHO is designed not to criminalize behavior, but rather to make social hosts responsible for their conduct in allowing minors to use (consume) and possess alcohol. There are no criminal consequences for violation of the SHO.

Second, County Counsel disagrees with your view regarding the issue of public nuisance. Since this is a civil ordinance and has no criminal consequences, it is governed by civil statutes relating to public nuisances, such as Civil Code § 3479 which declares that "Anything which is injurious to health...is a public nuisance." (See also Civil Code § 3494 which allows for the abatement of a nuisance by a public body or officer.) Under Civil Code § 3479, the definition of "public nuisance" is broad. It allows for "anything which is injurious to health" to be considered a public nuisance. That is what this ordinance does in a narrowly defined way. It provides, "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 real property under his or her ownership or control) where alcoholic beverages are in the possession of, or are being consumed by, any minor." We believe the narrow scope is not vague so as to be unconstitutional. Also, state law allows counties to declare certain activities a public nuisance and abate the nuisance, as well as provide an administrative process for nuisances. (see Government Code § 25845)

Under Business & Professions Code § 25658.2, a parent who allows their child to consume an alcoholic beverage in their home is guilty of a misdemeanor. While our ordinance does not reach that issue, the conduct would violate state law and assuming law enforcement had probable cause to believe a crime was being committed, they could take appropriate action.

County Counsel agrees that the issue of preemption can be a complex one. However, we do not believe the ordinance is preempted by state law, since this is not a criminal ordinance affecting

either possession (preempted by state law) or consumption (not preempted by state law), but rather imposes civil penalties on the "host" for allowing or hosting an event where underage drinking occurs. As you know, numerous jurisdictions throughout the state, both cities and counties, have enacted similar ordinances. To our knowledge none have been declared preempted by state law. Also, state law does not regulate this kind of conduct and it is merely supplemental to existing laws. Also, state law regulating underage drinking applies to minors in possession in "public places." This ordinance regulates conduct on private property.

As to your concern regarding costs, that issue a policy decision solely within the discretion of the Board of Supervisors.

Finally, the administrative fine and hearing officer approach is one used by the County in other contexts. Hearing examiners are either specifically provided for in the County Code, or as here, will be appointed after the effective date of the ordinance. There is no prohibition on having hearing officers appointed and paid for by the County. This is in fact routine. (Civil Service Commission, Retirement Board, County Code 24A etc.) (see also *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017; *McIntyre v. Santa Barbara County Employees' Retirement System* (2001) 91 Cal.App.4th 730)

We hope this responds to your concerns, but if not please feel free to contact our office.



COPY

December 11, 2007

Supervisor Salud Carbajal
 County of Santa Barbara
 Board of Supervisors
 105 E. Anapamu
 Santa Barbara, CA 93101

Dear Salud,

As coalitions representing North and South Santa Barbara County Fighting Back, we are writing to recommend that you consider supporting a Social Host Ordinance for the County.

Underage and binge drinking is a significant problem facing our young people today. Alcohol is the number one drug of choice for youth and the leading cause of death among teenagers. It is involved in the deaths of more teens than all other illicit drugs combined – by a four-to-one ratio. The number one setting for underage drinking and/or binge drinking remains “the home.” Social host ordinances help to limit the access to alcohol by holding the host, owner or manager of the “setting” or property accountable for allowing underage drinking to occur in the private setting.

Social host accountability refers to laws that hold non-commercial individuals responsible for underage drinking on property they own, lease or control. While there are laws prohibiting the furnishing of alcoholic beverages to underage youth, social host laws prohibit the host from providing a location for a gathering of underage persons who possess or consume alcohol.

Because of the impact on our youth involved in underage drinking, we feel it so important to have a County-wide Social Host Ordinance.

Sincerely,

Penny Jenkins
 Project Director
 Fighting Back Fighting Back

Teresa Menchaca
 Executive Director
 Fighting Back Santa Maria Valley