



Model Social Host Liability Ordinance

WITH LEGAL COMMENTARY AND RESOURCES

SEPTEMBER 2005

A Publication of the
Training, Applied Research, and Alcohol and Drug Prevention Division
Ventura County Behavioral Health Department

The intent of this report is to provide useful information to municipal governments, private institutions and community coalitions who are formulating responses to the many problems caused by home parties involving underage drinking.

Using this Publication

This is public information and is meant to be shared. Copy and distribute this Policy Briefing as appropriate. For additional copies please visit www.venturacountylimits.org

For more information, contact:

Ventura County Behavioral Health Department
Training, Applied Research, and Alcohol and Drug Prevention Division

Kathleen Staples, Division Manager
kathleen.staples@ventura.org

Daniel Hicks, Program Administrator
daniel.hicks@ventura.org

Center for the Study of Law and Enforcement Policy
Pacific Institute for Research and Evaluation

Stacy Saetta, J.D., Legal Policy Researcher
ssaetta@pire.org

or visit www.venturacountylimits.org

Suggested citation:

Model Social Host Liability Ordinance with Legal Commentary, Center for the Study of Law and Enforcement Policy, Pacific Institute for Research and Evaluation (Ventura, CA: Ventura County Behavioral Health Department Publication, 2005)

Model Social Host Liability Ordinance

WITH LEGAL COMMENTARY AND RESOURCES

SEPTEMBER 2005



A Publication of the
Training, Applied Research, and Alcohol and Drug Prevention Division
Ventura County Behavioral Health Department



Center for the Study of Law
and Enforcement Policy

A Center of the Pacific Institute for Research and Evaluation



Pacific Institute
FOR RESEARCH AND EVALUATION



VENTURA COUNTY LIMITS

A Community Partnership for Responsible Alcohol Policies & Practices

Table of Contents

- INTRODUCTION 2
- THE SOCIAL AND LEGAL CONTEXT..... 3
- HIGHLIGHTS..... 7
- MODEL SOCIAL HOST LIABILITY ORDINANCE 8
 - *Section 1: Short Title* 8
 - *Section 2: Legislative Findings* 8
 - *Section 3: Purposes* 9
 - *Section 4: Definitions* 9
 - *Section 5: Responsibility for Proper Property Management* 10
 - *Section 6: Penalties for Violation of Ordinance* 10
 - *Section 7: Recovery of Response Costs* 11
 - *Section 8: Billing and Collection* 12
 - *Section 9: Reservation of Legal Options* 13
 - *Section 10: Appeal* 13
 - *Section 11: Severability* 13
 - *Section 12: Effective Date* 13
- BIBLIOGRAPHY..... 14
- APPENDIX 15
 - Relevant California State Statutes..... 15
 - Sample California Ordinances 16
 - Useful Websites..... 22

Introduction

This is the third in a series of reports associated with Ventura County Limits, a Community Partnership for Responsible Alcohol Policies and Practices. Two previous reports considered issues related to underage and binge drinking in Ventura County, and the circumstances of drinking for young adults in Ventura County prior to their arrest for impaired driving (please see www.VenturaCountyLimits.org). Both of these publications suggested that home parties are settings in Ventura County where excessive alcohol consumption among underage and young adult drinkers can lead to dangerous—even deadly—consequences, and pointed to the need for new community prevention tools.

“Nearly three in ten (28.6%) of those 25 and younger that binge drink report last doing so in their own homes, and 45.2% report last binge drinking at someone else’s home. These data point to “house parties” as settings for binge drinking among young adults.”

—*Underage and Binge Drinking: Selected Findings from a Telephone Survey of Ventura County Residents (2005)*

As part of its county-wide initiative to reduce underage and dangerous drinking, including the serious and persistent problems associated with home drinking parties, the Ventura County Behavioral Health Department, in collaboration with the Center for the Study of Law Enforcement and Policy (CSLEP) of the Pacific Institute for Research and Evaluation (PIRE), has developed this publication to aid local governments and other community agencies in the formulation of effective prevention policies.

The model ordinance and commentary were designed to address communities of diverse settings and needs. They also take into consideration various concerns of municipalities with respect to effectively deterring loud, unruly or dangerous parties in private settings, using clear explanations of the different types of Social Host Liability and presenting options for imposing fees and recovering costs associated with law enforcement, fire, or other emergency response services.

In developing this publication the authors and sponsors have been encouraged by the intense concern of parents, community coalitions, law enforcement personnel and elected officials, all of whom have been calling out for better strategies to reduce the many social, health and public safety consequences of underage drinking parties. We hope the words on the following pages lead to community action, and, in turn, new social realities, that improve the quality of life and sense of safety for everyone in Ventura County.

The Social and Legal Context

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 annual social cost of underage drinking to be at least \$53 billion, *Reducing Underage Drinking* urges states and localities to enact a comprehensive set of strategies to reduce underage alcohol consumption. These strategies include strengthening social host liability laws to deter underage drinking parties and other gatherings.

Social host liability refers to laws that hold non-commercial individuals responsible for underage drinking events on property they own, lease, or otherwise control. Whereas laws prohibiting furnishing alcoholic beverages to underage persons target providing alcoholic beverages to underage persons, social host laws target providing the venue where underage drinking takes place.

A Practical Guide to Preventing and Dispersing Underage Drinking Parties (PIRE, undated) 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 alcohol addiction (Grant and Dawson, 1997). Enforcement activities to limit youth access to alcohol are critical to reducing underage drinking and its often tragic consequences. ...

One common way that underage drinkers gain access to alcohol is at parties. These parties are commonly large gatherings of young people in a home ..., in an outdoor area (like a beach or a park), or in some other venue (like a warehouse rented for the purpose). These parties can be particularly problematic because of the number of drinkers involved in the large quantities of alcohol consumed. Reports of alcohol poisonings, traffic crashes, property damage, community disturbance, violence, and sexual assault are all too common as a result of these parties.

Teen parties are a primary avenue for underage drinking for high school and college students – and of high consumption of alcohol and binge drinking. Mayer, Forster, Murray, and Wagenaar (1998) found that the most common setting for drinking among high school seniors was someone else's home. High consumption (five or more drinks) is also associated with drinking in larger groups. The

authors conclude that interventions that modify the environments in which adolescents find themselves have an impact on alcohol consumption levels. “Policies aimed at increasing the liability of adults who provide alcohol to or drink with minors may help to reduce underage drinking.” (Mayer et al: 214).

Approximately 46,200 of Ventura County residents are in high school grades nine through twelve¹, living in widely different residential, rural farming, canyon, beach, and coastal communities. Communities, regardless of type, report that many parents have a high tolerance for teen parties, allowing them to occur on their property often without any supervision.² *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices* (PIRE, 1999) observes: “This tolerance apparently stems from three misconceptions or beliefs: (1) alcohol, particularly beer, is a relatively harmless drug compared to illegal drugs, and its consumption is part of the passage to adulthood; (2) permitting consumption in a residential setting is safer than having it occur in open areas, where there is a higher risk of problems; and (3) teen drinking is inevitable, and it is safer if it occurs in a controlled, residential setting.”

Ventura County has three community colleges in Moorpark, Oxnard, and Ventura; a new four-year university Cal State Channel Islands in the Camarillo area; and California Lutheran University, a private institution in Thousand Oaks. Clapp, Shillington, and Segars (2000) found that for college students, parties were among the most common occasions for socializing and were the settings most associated with heavy drinking. Similarly, Jones-Webb, Toomey, Miner, Wagenaar, Wolfson, and Poon (1997) found that a common source of alcohol for college drinkers was parties-- including house parties, outdoor parties, or fraternity parties. Respondents to youth focus groups saw little risk of law enforcement intervention at underage drinking parties, indicating that expectations about enforcement of underage drinking laws were low.

Community tolerance is compounded by the legal obstacles to law enforcement agencies in deterring teen parties and college gatherings. (PIRE, 1999: 27.) California law prohibits both furnishing alcohol to underage persons and youth possession on public property. On the other hand, state law does *not* prohibit youth possession on private property, and state law does *not* prohibit youth consumption anywhere. Law enforcement “detecting an underage party may not have legal grounds to enter the premises, be unable to confiscate the alcohol, trace its original purchaser, or hold the adult homeowner, landlord, or renter responsible for allowing the party on the premises.” (PIRE, 1999: 27.)

Three Different Types of Social Host Liability

Depending on the state and local jurisdiction, the hosting of a party on private property at which an underage drinker becomes intoxicated could result in three distinct types of liability against the social host: social host criminal liability, social host civil liability, and recovery of response costs. Each type of liability should be viewed as a separate legal strategy for deterring underage drinking parties.

¹ 2004 Series Public K-12 Enrollment Projections. Demographic Research Unit, Department of Finance. October 2004. <http://www.dof.ca.gov/HTML/DEMOGRAP/K12Grads04.xls> Accessed 9/1/05.

² Pacific Institute for Research and Evaluation. 1999. *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*. <http://www.apolnet.ca/resources/education/bestpractices.html>. Accessed 9/1/05.

State Social Host Criminal Statutes

Social host criminal liability involves a state statutory violation, enforced by the state through criminal prosecution and leading to criminal sanctions such as fines or imprisonment. As of January 1, 2005, nineteen states have enacted social host criminal liability statutes.³

There are two types of state social host criminal statutes:

- **Specific House Party Laws.** These statutes, often called “open house party” laws, explicitly address parties or other gatherings attended by underage persons on private property. As of January 1, 2005, there were six jurisdictions with explicit house party laws.
- **General Laws Addressing Adult Permitting/Allowing Underage Drinking.** As of January 1, 2005, thirteen jurisdictions have statutes that prohibit social hosts from allowing or permitting underage drinking on their property. Although addressing the same problems, general laws are broader in scope than specific house party statutes (e.g., they may prohibit adults from allowing underage persons to consume alcohol in settings other than social gatherings), but they still apply to the underage drinking party context. These general laws do not provide specific guidelines commonly contained in specific house party laws, such as, for example, what steps a host can take to stop an underage party in progress to avoid criminal sanctions.

State Social Host Civil Liability Laws

Social host civil liability holds social hosts potentially responsible for the injuries to third parties caused by guests whom the hosts had served or had allowed to consume alcoholic beverages. This form of liability, which can be imposed by either statutes or common law negligence principles, involves private litigation and come into play only if an injured third party decides to sue the social host. Before the 1980s, state courts and legislatures in the United States were reluctant to impose liability on social hosts, reasoning that they were not as capable of handling the responsibilities of monitoring their guests’ alcohol consumption as were commercial vendors. Over time, this initial reluctance waned, and courts and legislatures continued to impose liability against social hosts in a growing number of circumstances.⁴ This growth in the imposition of social host liability is particularly evident in cases in which the intoxicated person is underage.⁵ Today, courts and legislatures accord underage persons special treatment not accorded intoxicated adults, based on the rationale that “[underage persons], because of their youth and inexperience in both drinking and driving, need greater safeguarding from intoxication than adults.”⁶ Only the state legislature or state courts (as opposed to city and county governments) have the authority to impose this form of civil liability.

³ In addition, numerous local communities have passed ordinances that impose criminal liability on social hosts.

⁴ See Hall, *Clouded Judgment: The Implications of Smith v. Merritt in the Realm of Social Host Liability and Underage Drinking in Texas* (1998) 30 St. Mary’s L.J. 207, 217 (reviews historical development of social host liability in Texas); Note, *Tort Law: Social Host Liability for the Negligent Acts of Intoxicated Minors--Mitseff v. Wheeler*, 38 Ohio St. 3d 112, 526 N.E.2d 798 (1988) (1989) 14 U. Dayton L. Rev. 377 (reviews historical development of social host liability in Ohio); Comment, *Beyond Social Host Liability: Accomplice Liability* (1988) 19 Cumb. L. Rev. 553, 554; Note, *Social Host Liability to Third Parties for the Acts of Intoxicated Adult Guests: Kelly v. Gwinnell* (1988/1989) (1985) 38 Sw. L.J. 1297, 1298-1299.

⁵ See Note, *supra* note 1, 14 U. Dayton L. Rev. at 377.

⁶ See Comment (1992) 25 U.C. Davis L.Rev. 463, 471.

Response Costs Recovery Municipal Ordinances

A third type of social host liability occurs at the level of local government in the form of municipal (city or county) ordinances called “response costs recovery” ordinances. In general, these laws hold social hosts (including tenants) and landowners (including landlords) civilly responsible for the costs of law enforcement, fire, or other emergency response services associated with multiple responses to the scene of an underage drinking party or other gathering occurring on private property, whether or not the hosts or landowners had knowledge of the occurrence of the parties or gatherings.

As part of its county-wide initiative to reduce underage and binge drinking, including the occurrence of underage drinking parties and other gatherings, the Ventura County Behavioral Health Department’s Training, Applied Research, and Alcohol and Drug Prevention Division, in collaboration with the Center for the Study of Law Enforcement and Policy (CSLEP) of Pacific Institute for Research and Evaluation (PIRE), has published the following model response costs recovery ordinance. This model ordinance can be the basis for a powerful new legal tool to deter underage drinking parties and other gatherings in communities throughout the county.

The model ordinance is drafted in a manner that addresses communities of diverse needs. It also accommodates the varied concerns of both the county’s unincorporated areas and incorporated cities. The text of the model ordinance may be modified easily to address these differences. For the county, the model ordinance is best placed as a new Article 12 to follow Article 11, *Loud or Raucous Nighttime Noise in Residential Zones* in Division 6, *Police Regulations*, of the Codified Ordinances of the County of Ventura.

Highlights

of the Model Social Host Liability Ordinance

- Recognizes that the occurrence of loud or unruly parties on private property where alcoholic beverages are served to, or consumed by, underage persons is harmful to the underage persons themselves, is a threat to public health, safety, quiet enjoyment of residential property and general welfare, and constitutes a public nuisance.
- Recognizes that persons responsible for the occurrence of loud or unruly parties on private property over which they have possession or control have a duty to ensure that alcoholic beverages are not served to, or consumed by, underage persons at these parties.
- Recognizes that landlords have a duty to prevent the occurrence of loud or unruly parties, including those where alcoholic beverages are served to, or consumed by, underage persons, on private property they lease to tenants, even if they do not have day-to-day, physical control of the property.
- Recognizes that law enforcement, fire, or other emergency responders often need to respond multiple times to disperse underage drinking parties, resulting in a disproportionate expenditure of the public safety resources on these parties, delaying police responses to regular and emergency calls, and reducing police calls to the rest of a community.
- Recognizes that cities and counties require a variety of enforcement strategies to abate underage drinking parties under varying circumstances and that present law constrains the ability of law enforcement to deter underage drinking parties and other gatherings.
- As a primary strategy for deterring underage drinking parties on private property, imposes a civil fee against social hosts (including tenants) and/or landowners (including landlords) for the recovery of specified costs associated with providing law enforcement, fire, or other emergency response services on multiple occasions to the scene of a loud or unruly party where alcoholic beverages are served to, or consumed by, underage persons.
- Provides option of imposing criminal penalties in cases of egregious circumstances or recalcitrant offenders.

Model Social Host Liability Ordinance

Section 1. Short Title.

This [Ordinance] shall be known as the “Model Social Host Liability Ordinance.”

Section 2. Legislative Findings.

The [city council/county board of supervisors] finds as follows:

(a) [The City of _____/County of Ventura], 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 held at private residences or at rented residential and commercial 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 occurrence of loud or unruly gatherings on private property over which they have possession or control have failed to ensure that alcoholic beverages are neither served to nor consumed by underage persons at these parties;

(d) Landlords have failed to prevent the occurrence or reoccurrence of loud or unruly gatherings, including those where alcoholic beverages are served to or consumed by underage persons, on private property they lease to tenants, which seriously disrupts the quiet enjoyment of neighboring residents;

(e) 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 unless the [City of ___ Police Department/Ventura County Sheriff’s Office] has the legal authority to direct the host to disperse the gathering;

(f) 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;

(g) Persons held responsible for abetting or tolerating loud or unruly gatherings will be more likely to properly supervise or stop such conduct at gatherings held on property under their possession or control;

(h) In the past and present, law enforcement, fire and other emergency response services personnel have and are required to respond, sometimes on multiple occasions, to loud or unruly gatherings on private property at which alcoholic beverages are served to or consumed by underage persons, and responses to such gatherings result in a disproportionate expenditure of public safety resources of the [City of ___/Ventura County], which are underwritten by general municipal taxes paid to the [City/County] by its taxpayers and residents and delaying police responses to regular and emergency calls to the rest of the [City/County].

[Include this finding only if the legislative body intends to make allowing a loud or unruly gathering a strict liability offense. Do not include finding if legislative body intends to require that the offender “knowingly” allowed a loud or unruly gathering:]

(i) The intent of this Ordinance is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. An ordinance that imposes strict liability on property owners and other responsible persons for the nuisances created by loud and unruly gatherings is necessary to deter and prevent such gatherings. Persons who actively and passively aid, allow or tolerate loud or unruly gatherings shall be held strictly liable for the nuisances created by such gatherings and the costs associated with responding to such gatherings.

COMMENT

This section on findings describes the reasons of the city council or county board of supervisors for enacting a social host liability ordinance. The findings are included in the city council’s/county board of supervisors’ enactment of the ordinance. When the ordinance is codified in a city or county’s municipal code, the findings, in the discretion of the legislative body, may be excluded. On the other hand, findings such as Finding (i) should be included in the codified ordinance to clarify legislative intent with respect to other provisions of the ordinance.

Section 3. Purposes.

The purposes of this Ordinance are:

- (a) to protect public health, safety and general welfare;
- (b) to enforce laws prohibiting the service to and consumption of alcoholic beverages by underage persons; and
- (c) to reduce the costs of providing police, fire and other emergency response services to loud or unruly gatherings, by imposing a civil fee against social hosts and landowners (including landlords) for the recovery of costs associated with providing law enforcement, fire and other emergency response services to loud or unruly gatherings, including those where alcoholic beverages are served to or consumed by underage persons.

COMMENT

Findings and purposes provide guidance to courts interpreting legislative intent and publicly explain the goals and objectives of a city council or county board of supervisors in enacting the ordinance. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 858.)

Section 4. Definitions.

For the purposes of this Ordinance, the following terms shall have the following meanings:

- (a) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) "Alcoholic beverage" includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- (c) "Response costs" means the costs associated with responses by law enforcement, fire and other emergency response providers to loud or unruly gatherings, including but not limited to:
 - 1) salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with loud or unruly gatherings, and the administrative costs attributable to such response(s);

2) the cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of a loud or unruly gathering;

3) the cost of repairing any [city/county] equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

(d) "Juvenile" means any person under eighteen years of age.

(e) "Underage person" means any person under twenty-one years of age.

(f) "Loud or unruly gathering" means a party or gathering of two or more persons at or on a residence or other private property upon which loud or unruly conduct occurs. Such loud or unruly conduct includes but is not limited to:

- 1) excessive noise;
- 2) excessive traffic;
- 3) obstruction of public streets or crowds that have spilled into public streets;
- 4) public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
- 5) service to or consumption of alcohol or alcoholic beverages by any underage person, except as permitted by state law;
- 6) assaults, batteries, fights, domestic violence or other disturbances of the peace;
- 7) vandalism;
- 8) litter; and
- 9) any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare.

A loud or unruly gathering shall constitute a public nuisance.

(g) "Responsible person" means a person or persons with a right of possession in the residence or other private property on which a loud or unruly gathering is conducted, including, but not limited to:

- 1) an owner of the residence or other private property;

- 2) a tenant or lessee of the residence or other private property;
- 3) the landlord of another person responsible for the gathering;
- 4) the person(s) in charge of the residence or other private property; and
- 5) the person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering.

If a responsible person for the gathering is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this Ordinance. To incur liability for response costs imposed by this Ordinance, the responsible person for the loud or unruly gathering need not be present at such gathering resulting in the response giving rise to the imposition of response costs. This Ordinance therefore imposes vicarious as well as direct liability upon a responsible person.

(h) “Residence or other private property” means a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.

COMMENT

Section 4 provides definitions for the other sections of the Ordinance. The definitions help clarify the rights and obligations of owners, tenants, and other persons in control of the property on which a loud or unruly party occurs. The definitions of “alcohol” and “alcoholic beverages” are identical to the relevant definitions in state statute (Cal. Bus. & Prof. Code, § 23003, 23004).

Section 5. Responsibility for Proper Property Management.

Every owner, occupant, lessee or holder of any possessory interest of a residence or other private property within the [City of ___/County of Ventura] is required to maintain, manage and supervise the property and all persons thereon in a manner so as not to violate the provisions of this Ordinance. The owner of the property remains liable for such violations regardless of any contract or agreement with any third party regarding the property.

COMMENT

Section 5 provides that a property owner is liable for violating the ordinance (if certain conditions are met, described later in the ordinance). Under this provision, the owner can be held liable even if he/she has leased the property and does not have day-to-day responsibility for the property’s management.

[Note: At least one other jurisdiction outside California, the Town of Bloomsburg, Pennsylvania, not only has a recovery of response costs ordinance, but also has an ordinance requiring landlords to obtain a permit from the town before leasing rental properties to students.]

[This version of Section 6 is for Cities only:] Section 6. Penalties for Violation of Ordinance.

(a) It shall be an infraction for any responsible person to [knowingly] conduct, aid, allow, permit or condone a loud or unruly gathering at a residence or other private property.

(b) Fines.

1) A first violation of this Section shall be punishable by a \$250 fine.

2) A second violation of this Section at the same residence or other private property, or by the same responsible person, within a twelve month period shall be punishable by a fine of \$500.

3) A third or subsequent violation of this Section at the same residence or other private property, or by the same responsible person, within a twelve month period shall be punishable by a fine of \$1,000.

(c) The fines prescribed at subsection (b) are in addition to any response costs that may be assessed pursuant to this Ordinance.

(d) The second, third or subsequent violation fines prescribed at subsections (b)(2) and (b)(3) are payable whether or not the responsible person for such loud or unruly gathering is different from the responsible person for any prior loud or unruly gathering at the residence or other private property.

(e) The fine schedule prescribed at subsection (b) is a “rolling schedule” meaning that in calculating the fine payable the [Police Department or City Attorney shall count backward starting from the date of the most recent loud or unruly gathering to determine how many prior loud or unruly gatherings have taken place

at the residence or other private property in question during the statutory twelve month period. A warning given pursuant to this Ordinance shall remain in effect for the residence or other private property at a given address until a full twelve month period has elapsed during which there have been no response to a loud or unruly gathering at that residence or other private property.

(f) The fines set forth in this Section may be appealed pursuant to Section 10. The payment of any such fines shall be stayed upon any timely appeal.

COMMENT

This version of Section 6 should be included in city ordinances only. This section makes a violation of its terms an infraction. Infractions are crimes and public offenses. They are not punishable by imprisonment, however, and a person charged with an infraction is not entitled to a jury trial or to counsel appointed at public expense.

Even though the fines under this section would be prosecuted as criminal infractions, the prosecution would not have to prove criminal intent, that is, that the responsible person knew or should have known that he or she allowed a loud or unruly gathering. A violation of Section 7 should be deemed a strict liability infraction. Accordingly, if the legislative body chooses to make violation of this section a strict liability infraction, the word “knowingly,” appearing in brackets, would be omitted. In addition, Finding (i) in Section 2 would have to be included in the codified version of the ordinance to make clear that the legislative intent is to protect the public health, safety and welfare rather than to punish and that the ordinance imposes strict liability on property owners and other responsible persons for the nuisances created by underage drinking gatherings.

Some legislators may feel uncomfortable with an ordinance that does not require the prosecution to prove knowledge beyond a reasonable doubt under this section, particularly where the defendant is an absentee landlord or other property owner who was unaware of loud and unruly gatherings occurring on his/her property. In such case, the word “knowingly” could be included to require the prosecution to prove beyond a reasonable doubt, that the responsible person knew or should have known about the loud or unruly gatherings on his/her property.

In any event, imposition of response costs pursuant to Section 7 (see below) a fee imposed separate and apart from the fines and penalties imposed here under Section 6, would not require proof of criminal intent, that is, no proof of knowledge, since the recovery of response costs is

a strictly civil matter.

It should be noted that court proceedings of infractions are not lengthy; the matter may be resolved within a short number of months.

[This version of Section 6 is for the County Only:] Section 6. Penalties for Violation of Ordinance.

It is a violation of this Ordinance for any responsible person to conduct or allow a loud or unruly gathering at a residence or other private property. Such a violation subjects the responsible person to the fines and penalties set forth in Section 13112 of Division 13, *Abatement of Nuisances*, of the Codified Ordinances of the County of Ventura.

COMMENT

The county of Ventura has an enforcement scheme to abate public nuisances set forth in Division 13, *Abatement of Nuisances*, of the Codified Ordinances of the County of Ventura. Applying the administrative fines and penalties provisions of Section 13112 permits the county to impose administrative fines and penalties against responsible persons as a strict liability public nuisance offense, rather than as a criminal offense requiring proof of criminal intent (knowledge) beyond a reasonable doubt.

The fine under Division 13 initially is smaller than those infraction fines set forth in this model ordinance for cities. This is because the administrative fines under Division 13 are limited in amount by Government Code section 53069.4, which is incorporated by reference in Division 13.

Note: If this ordinance were enacted, additional changes to the rest of the county ordinance would be necessary, such as an expansion of the definition of “Enforcement Officer” in section 13050(b) of Division 13, to include emergency response providers.

Section 7. Recovery of Response Costs.

When law enforcement, fire or other emergency response provider responds to a loud or unruly gathering at a residence or other private property within the [City of ___/County of Ventura] within a twelve month period of a warning given to a responsible person for a loud or unruly gathering, all responsible persons shall be jointly and severally liable for the [city’s/county’s] costs of providing response costs for that response and all subsequent responses during the warning period.

When a law enforcement, fire or other emergency response

provider official makes an initial response to a loud or unruly gathering at a residence or other private property within the [City of ___/County of Ventura], the official shall inform any responsible person(s) for the gathering at the scene that:

- (a) The official has determined that a loud or unruly gathering exists; and
- (b) Responsible person(s) will be charged for any response costs required for subsequent responses to the scene for a loud or unruly gathering within a twelve month period.

Only one warning will be given to a responsible person(s) pursuant to this Section before the [City of ___/County of Ventura] assesses response services costs pursuant to *Section 7*. If a responsible person cannot be identified at the scene, the official may issue a warning to one or more persons identified in *Section (4)(g)* and/or subsequently return to the residence or other private property and issue the warning to a then-present responsible person. Warnings given to responsible persons who do not reside at the residence or other private property in question shall be delivered by first-class [and/or] certified mail.

COMMENT

The model ordinance sets forth a multi-tiered enforcement mechanism against responsible persons. With respect to cities at the first tier of enforcement, that is, at the first response stage, the responsible person would be held liable for a fine of \$250 for a first time infraction pursuant to *Section 6*. With respect to the county, the responsible person would be held liable for a fine of \$100 pursuant to the fines and penalties set forth in *Section 13112 of Division 13, Abatement of Nuisances, of the Codified Ordinances of the County of Ventura*. At the first tier of enforcement, the responsible person would not be liable for recovery of response costs.

With respect to cities and the county at the second tier of enforcement, that is, when emergency response providers are required to make a follow-up call to either the same gathering or another gathering within 12 months at the same location, the responsible person would be held liable for an increased fine and, in addition, for response costs. For a third or subsequent response to either the same gathering or another gathering within 12 months at the same location, the responsible person would be held liable for an even larger fine, as well as for additional response costs.

Section 7 sets forth the conditions under which a responsible person shall be held liable for the recovery of response costs. This occurs when (1) an emergency

response provider conducts a first response to the residence or other private property and determines that a loud or unruly gathering exists; (2) the emergency response provider gives a first warning to the responsible person; and (3) an emergency response provider conducts a subsequent response and either the loud or unruly gathering has not abated or another loud or unruly gathering is occurring at the residence or other private property.

An emergency response provider's determination that a loud or unruly gathering exists includes, but is not limited to, evidence that an underage drinking gathering is or was underway, in the form of the responding provider's personal knowledge or eyewitness accounts of third parties. Such evidence could include evidence of: underage persons fleeing the host's residence, presence of used or unused kegs, bottles, and cans, vehicles on the property not belonging to the host, complaints from neighbors, and property damage.

Legislative bodies should determine whether twelve months gives law enforcement sufficient time to enforce this Ordinance, especially against repeat offenders.

Recovery of response costs is a civil matter. Therefore, response costs recovery are imposed as a strict liability public nuisance offense, rather than as a criminal offense requiring proof of criminal intent (knowledge) beyond a reasonable doubt.

Section 8. Billing and Collection.

The amount of response costs shall be deemed a debt owed to the local entity by the responsible person held liable in *Section 7* for the loud or unruly gathering and, if a juvenile, by the juvenile's parents or guardians. Any person owing such costs shall be liable in a civil action brought in the name of the city for recovery for such fees, including reasonable attorney fees.

Notice of the costs for which the responsible person is liable shall be mailed via first-class [and/or] certified mail within 14 days of the response giving rise to such costs. The notice shall contain the following information:

- (a) the name of the person(s) being held liable for the payment of such costs;
- (b) the address of the residence or other private property where the loud or unruly gathering occurred;
- (c) the date and time of the response;
- (d) the law enforcement, fire or emergency service

provider who responded;

(e) the date and time of any previous warning given pursuant to *Section 7* and/or previous responses to loud or unruly gatherings at the residence or other private property in question within the previous twelve months; and

(f) an itemized list of the response costs for which the person(s) is being held liable.

The responsible person must remit payment of the noticed response costs to the [City Clerk/City Manager/Billings and Collections Division of the City of ___/County of Ventura] within thirty days of the date of the notice. The payment of any such costs shall be stayed upon a timely appeal made pursuant to *Section 10*.

COMMENT

The billing mechanism that should be applied depends in part on the billing system already in place in the specific jurisdiction. Most jurisdictions have in place ordinances that set forth the procedures for administrative billing and fines. Reference should be made to those procedures, and the ordinances that provide for them, in *Section 8* when this model ordinance is tailored to a specific jurisdiction. If such procedures do not exist in the jurisdiction, such procedures should be included in *Section 8*.

Section 9. Reservation of Legal Options.

Nothing in this Ordinance shall be construed as a waiver by the [City of ___/County of Ventura] of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures, including [*for County ordinance only: Loud or Raucous Nighttime Noise in Residential Zones, Article 11 of Chapter 2, Division 6 of the Ventura County Ordinance Code*]. The procedure provided for in this Ordinance is in addition to any other statute, ordinance or law, civil or criminal. This Ordinance in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Ordinance.

COMMENT

Section 9 provides that the [City of ___/County of Ventura] does not waive its rights to seek reimbursement through other available legal means and that the ordinance does not restrict law enforcement in making arrests for any criminal offenses arising from the underage drinking event. With respect to the former, this provision ensures that a city or county would not be precluded from bringing an action for

public nuisance based on the same set of facts giving rise to a violation of the underage party ordinance.

Section 10. Appeals.

Any person upon whom is imposed a fine/penalty pursuant to *Section 6* and/or response costs recovery fees pursuant to *Sections 7* and *8* shall have the right to appeal the imposition of such fine/penalty or fees to the local jurisdiction pursuant to the procedures established by the local jurisdiction for appealing the abatement of public nuisances.

COMMENT

Due process arguably requires some administrative appeal procedure for both the imposition of fines/penalties and response costs. As with *Section 8*, regarding Billing and Collection, the appeal section should reference the existing administrative appeal process in the particular jurisdiction. For example, in the County of Ventura, reference should be made here to 13102, *Hearing on proposed abatement and imposition of administrative fines/penalties*, of the Codified Ordinances of the County of Ventura. If no appeal process exists in the jurisdiction, the procedures for such a process and hearing should be set forth in *Section 10*.

Section 11. Severability.

If any provisions of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Section 12. Effective Date.

This Ordinance shall take effect on _____

Bibliography

- Adams, C. Kent. 1985. Social Host Liability to Third Parties for the Acts of Intoxicated Adult Guests: *Kelly v. Gwinell*. *Southwestern Law Journal* 38: 1297.
- Bonnie, Richard J. 1981. "Discouraging the Use of Alcohol, Tobacco, and Other Drugs: The Effects of Legal Controls and Restrictions" in *Advances in Substances Abuse* 2: 145-184, Mello, ed. JAI Press Inc.
- Bonnie, Richard J. 1985. "The Efficacy of Law as a Paternalistic Instrument," in G. Melton, ed., *Nebraska Symposium on Human Motivation*, 131 (Nebraska).
- Clapp, John D., Audrey M. Shillington, and Lance B. Segars. 2000. Deconstructing Contexts of Binge Drinking Among College Students. *American Journal of Drug and Alcohol Abuse* 26(1): 139-154.
- Grant, B.F. and Dawson, D.A. 1997. Age at onset of alcohol use and its association with DSM-IV alcohol abuse and dependence: Results from the National Longitudinal Alcohol Epidemiologic Survey. *Journal of Substance Abuse* 9: 103-110
- Hall, Sabrina A. 1998. Perspective: Clouded Judgment: The Implications of *Smith v. Merritt* in the Realm of Social Host Liability and Underage Drinking in Texas. *St. Mary's Law Journal* 30: 207.
- Huffman, Mary Katherine. 1989. Tort Law: Social Host Liability for the Negligent Acts of Intoxicated Minors—*Mitseff v. Wheeler*, 38 OHIO ST. 3D 112, 526 N.E.2D 798 (1988). *University of Dayton Law Review* 14: 377.
- Jones-Webb R, Toomey T, Miner K, Wagenaar AC, Wolfson M, Poon R. Why and in what context adolescents obtain alcohol from adults: A pilot study. *Substance Use & Misuse*, (2):219-28, 1997.
- Lord, Denise Jones. 1988. Beyond Social Host Liability: Accomplice Liability. *Cumberland Law Review* 19: 553.
- National Research Council Institute of Medicine. 2003. *Reducing Underage Drinking: A Collective Responsibility*. Washington DC: National Academy Press.
- Pacific Institute for Research and Evaluation. Undated. *A Practical Guide to Preventing and Dispersing Underage Drinking Parties*. www.udetc.org/documents/UnderageDrinking.pdf. Accessed on 01/05/05.
- Pacific Institute for Research and Evaluation. 1999. *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*. <http://www.apolnet.ca/resources/education/bestpractices.html>. Accessed 9/1/05.
- 2004 Series Public K-12 Enrollment Projections. Demographic Research Unit, Department of Finance. October 2004. <http://www.dof.ca.gov/HTML/DEMOGRAP/K12Grads04.xls> Accessed 9/1/05.
- United States Department of Health and Human Services. 1992. *Youth and alcohol: Dangerous and deadly consequences*. Washington, DC: Department of Health and Human Services, Office of Inspector General.
- Wolfson, M. Wagenaar, A., & Hornseth, G. 1995. Law officers' views on enforcement of the minimum drinking age: A four-state study. *Public Health Reports*, 110, 428-438.

Appendix

RELEVANT CALIFORNIA STATE STATUTES (AS OF SEPTEMBER 1, 2005)

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

- (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 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 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 not exceeding 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, who sell 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 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 under any other provision of law, including, but not limited to, Section 272 of the Penal 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

(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.

SAMPLE CALIFORNIA ORDINANCES (AS OF SEPTEMBER 1, 2005)

CITY OF BERKELEY

CHAPTER 13.48 CIVIL PENALTIES FOR MULTIPLE RESPONSES TO LOUD OR UNRULY PARTIES, GATHERINGS OR OTHER SIMILAR EVENTS

Section 13.48.010 Findings and purpose.

This chapter is enacted for the following public purposes among others:

A. Due to inadequate supervision, some large gatherings of people, such as parties, frequently become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, excessive traffic, obstruction of public streets or crowds who have spilled over into public streets, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter.

B. The City of Berkeley (hereafter "City") is required to make multiple responses to such unruly gatherings in order to restore and maintain the peace and protect public safety. Such gatherings are a burden on scarce City resources and can result in police responses to regular and emergency calls being delayed and police protection to the rest of the City being reduced.

C. In order to discourage the occurrence of repeated loud and unruly gatherings, the persons responsible for the public nuisance created by these gatherings should be fined. (Ord. 6182-NS § 1, 1993)

Section 13.48.020 Loud or unruly gatherings--Public nuisance.

It shall be unlawful and a public nuisance to conduct a gathering of ten or more persons on any private property in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law. Illustrative of such unlawful conduct is excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, litter. A gathering constituting a public nuisance may be abated by the City by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and citation and/or arrest of any law violators under any applicable local laws and state statutes such as: Berkeley Municipal Code ("BMC") Chapter 13.40 et seq. (Community Noise), BMC Chapter 13.36 et seq. (Disorderly Conduct/Obstruction of Public Way), Penal Code Sections 415 and 416 (Breach of the Peace); BMC Chapter 12.40 et seq. and Penal Code Section 374 et seq. (Litter); Penal Code Section 647 (Public Intoxication/Obstruction of Public Way); Bus. & Prof. Code Section 25658 (Selling Alcohol to Minors), Vehicle Code Section 23224 (Possession of alcoholic beverage in vehicle, persons under 21); BMC Chapter 13.68 et seq. (Carrying Dangerous Weapons), Penal Code Section 12020 et seq. (Unlawful Carrying and Possession of Concealed Weapons). (Ord. 6182-NS § 2, 1993)

Section 13.48.030 Notice of unruly gathering--Posting, mail.

A. Posting of Premises. When the City intervenes at a gathering which constitutes a nuisance under this chapter, the premises at which such nuisance occurred shall be posted with a notice substantially in the form attached hereto as Exhibit "A"* stating that the intervention of the City has been necessitated as a result of a public nuisance under this chapter caused by an event at the premises, the date of the police intervention, and that any subsequent event within a sixty-day period therefrom on the same premises, which necessitates City intervention, shall result in the joint and several liability of any guests causing the public nuisance, or any persons who own or are residents of the property at which the public nuisance occurred, or who sponsored the event constituting the public nuisance as more fully set forth in Sections 13.48.040--13.48.060 below. The residents of such property shall be responsible for ensuring that such notice is not removed or defaced and shall be liable for a civil penalty of one hundred dollars in addition to any other penalties which may be due under this section if such notice is removed or defaced, provided, however, that the residents of the house of sponsor of the event, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

B. Mailing of Notice to Property Owner. Notice of the event shall also be mailed to any property owner at the address shown on the City's property tax assessment records and shall advise the property owner that any subsequent event within sixty days on the same premises necessitating City intervention shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth below. (Ord. 6182-NS § 3, 1993)

* Exhibit A, referred to herein, may be found at the end of this Chapter 13.48.

Section 13.48.030A Exhibit A.

EXHIBIT A

(Section 13.48.030A)

IMPORTANT NOTICE REGARDING

PUBLIC NUISANCE

PURSUANT TO ORDINANCE NO. _____ -N.S., AS A RESULT OF A PRIOR DISTURBANCE AT PREMISES, THE NEXT DISTURBANCE WILL RESULT IN CIVIL PENALTIES IMPOSED UPON ALL PARTICIPANTS AND SPONSORS OF THE EVENT, AND ALL PROPERTY OWNERS OF THE PREMISES.

NOTICE IS HEREBY GIVEN THAT, pursuant to Ordinance No. _____ -NS. on _____, 199 ____, at _____ a.m./p.m., the Berkeley Police Department found that a public nuisance caused by a disturbance of the public peace and/or threat to public safety occurred at the premises located at _____ . If there is a subsequent event on these premises which constitutes such a public nuisance and necessitates the intervention of the Police Department on or before _____, (count 60 days from the date of first police intervention) every participant in and sponsor of such event, and the owner of the premises, shall be jointly and severally liable for the civil penalties connected with this response as set forth in Ordinance No. _____ -N.S.

(Signature of Officer issuing notice)

(Name of Officer)

(Title of Officer) (Phone Number)

199 __; _____
Date issued Case Number

Section 13.48.040 Persons liable for a subsequent response to a gathering constituting a public nuisance.

If the City is required to respond to a gathering constituting a public nuisance on the same premises more than once in any sixty-day period, the following persons shall be jointly and severally liable for civil penalties as set forth in Sections 13.48.050 below, in addition to liability for any injuries to City personnel or damage to City property.

A. The person or persons who own the property where the gathering constituting a public nuisance took place, provided that notice has been mailed to the owner of the property as set forth herein and the gathering occurs at least two weeks after the mailing of such notice. For purposes of this subsection, where a gathering takes place within the confines of a single unit in a building owned by a housing cooperative, the owner of the property shall be deemed to be the owner of the single unit and not the members of the housing cooperative in general. Where the gathering took place in the common area of a building owned by a housing cooperative, only the members of the cooperative owning units in the building where the gathering took place shall be deemed the owners of the property for purposes of this subsection. Other members of the housing cooperative may still be liable if they fall within the categories of person made liable by Section 13.48.040, subsections B., C., or D., below.

B. The person or persons residing on or otherwise in control of the property where such gathering took place.

C. The person or persons who organized or sponsored such gathering.

D. All persons attending such gathering who engaged in any activity resulting in the public nuisance.

E. Nothing in this section shall be construed to impose liability on the resident or owners of the premises or sponsor of the gathering, for the conduct of persons who are present without the express or implied consent of the resident or sponsor, as long as the resident and sponsor have taken all steps reasonably necessary to exclude such uninvited participants from the premises. Where an invited guest engages in conduct which the sponsor or resident could not reasonably foresee and the conduct is an isolated instance of a guest at the event violating the law which the sponsor is unable to reasonably control without the intervention of the police, the unlawful conduct of the individual guest shall not be attributable to the sponsor or resident for the purposes of determining whether the event constitutes a public nuisance under this section. (Ord. 6182-NS § 4, 1993)

Section 13.48.050 Schedule of civil penalties.

A. Civil penalties shall be assessed against all persons liable for the City's intervention to abate a gathering constituting a public nuisance as follows:

1. For the second response in any sixty day period the penalty shall be the total sum of five hundred dollars.
2. For the third response in any sixty day period the penalty shall be the total sum of one thousand dollars.
3. For any further response in any sixty day period the penalty shall be the total sum of one thousand five hundred dollars for each such further response.
4. The penalties that are provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an event which is a public nuisance under this ordinance, provided however, that if the only violation of law which constituted the public nuisance under this chapter is excessive noise, the remedies provided under this chapter shall be exclusive of any other remedies provided by law to the City for such excessive noise.

B. The City shall bill all persons liable for the penalties by mail by sending a letter in substantially the form attached hereto as Exhibit "B".* Payment of the penalties shall be due within thirty days of the date the bill is deposited in the mail. If full payment is not received within the required time for payment, the bill will be delinquent, and all persons liable for the penalties shall be charged interest at the maximum legal rate from the date the payment period expires and a further civil penalty in the amount of one hundred dollars. (Ord. 6182-NS § 5, 1993)

* Exhibit B, referred to herein, may be found at the end of this Chapter 13.48.

Section 13.48.050B Exhibit B.

EXHIBIT B

(Section 13.48.050B)

Date:

To:

Dear:

The City of Berkeley was required to abate the public nuisance caused by a gathering of ten or more persons at (location of property) _____, which substantially disrupted the quiet enjoyment of property in a significant segment of the adjacent neighborhood. This is the (second/third/fourth, etc.) such public nuisance at this property within the last sixty (60) days and thus a penalty of _____ \$550.00, \$1,000.00, etc.) is imposed on you. If you fail to remit this fine to the City of Berkeley by _____ (30 days later) you will be liable for an additional \$100.00 penalty, plus interest. The payment should be remitted to the address listed below.

Your liability is based on the fact that you were:

- An owner of the property to whom was sent prior notice of a public nuisance at the property within the previous 60 days; and/or
- A person who resides on or is otherwise in control of the property where the public nuisance took place; and/or
- A person who organized or sponsored the event creating the public nuisance at such property; and/or
- A person who attended the event constituting the public nuisance at such property and engaged in the conduct which resulted in the public nuisance.

If you believe that you are not liable you may defend this claim in the civil action which the City of Berkeley will file against you upon your failure to remit the penalty. You should be aware, however, that if you fail to prevail in that action you will be liable for the additional penalty of \$100/- and interest on the total penalties.

Sincerely yours,

(Name, title, address and phone number of signatory)

Section 13.48.060 Collection of delinquent costs for a subsequent City response.

A. The penalties assessed as a result of a subsequent City response to a loud or unruly gathering shall constitute a debt of all persons liable for the penalties in favor of the City and may be collected in any manner authorized by law and are recoverable in a civil action filed by the City in a court of competent jurisdiction. The remedies provided by this chapter are in addition to all other civil and criminal remedies available to the City with respect to the unlawful conduct constituting the public nuisance which gave rise to the need for the City response under this chapter.

B. The City of Berkeley may also collect the fees assessed against the owner of the property as provided in Ordinance No. 6156-N.S., The Recovery of Costs for Abatement of Nuisances Ordinance (BMC Chapter 1.25). (Ord. 6182-NS § 6, 1993)

Section 13.48.070 Nondiscrimination against students.

This chapter shall not be enforced in a manner which targets property housing students. Nothing in this section shall preclude the City from setting priorities in the use of its resources by enforcing this chapter against the events that are the most disruptive or against properties at which disruptive events are held most often or on the basis of other similar legitimate factors. (Ord. 6182-NS § 7, 1993)

CITY OF SANTA CRUZ

Chapter 9.37 CHARGES FOR SPECIAL SECURITY SERVICES AT LOUD OR UNRULY GATHERINGS

9.37.010 DEFINITIONS.

The following terms used in this chapter shall have the meanings set forth in this section.

(a) "Responsible person(s)" shall mean a person(s) with a right of possession in the property on which a loud or unruly gathering is conducted, including, but not limited to, an owner or tenant of the property if the gathering is on

private property, or a permittee if the gathering is a permitted gathering on public property, or any person(s) accepting responsibility for such a gathering. "Responsible person" shall additionally include the landlord of another responsible person and the parents and/or legal guardians of responsible persons under the age of 21 years. To incur liability for special security service charges imposed by this chapter the responsible person need not be present at the loud or unruly gathering resulting in the emergency response giving rise to the imposition of special security service charges. This chapter therefore imposes vicarious as well as direct liability upon responsible persons.

(b) "Special security services" shall mean the provision of any police, fire or other emergency response service to a loud or unruly gathering within twelve months of a first response as provided in this chapter.

(c) "Loud or unruly gathering" shall mean a gathering of two or more persons on private property or a permitted gathering of two or more persons on public property whose loud or unruly conduct constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare, including violations of Chapter 9.36. This term excludes incidents of domestic violence. A loud or unruly gathering shall constitute a public nuisance.

(Ord. 2005-20 § 1, 2005: Ord. 89-03 § 1, 1989).

9.37.020 RESPONSE TO LOUD OR UNRULY GATHERINGS.

When a police officer responds to a first loud or unruly gathering at premises in the city with a given address, the officer shall inform any responsible person at the scene that:

(a) The officer has determined that a loud or unruly gathering exists; and

(b) Responsible persons will be charged for the cost of any special security services required for subsequent responses to the scene within the next twelve months.

Only one warning will be given pursuant to this section before the city assesses special security service costs pursuant to Section 9.37.030. If a responsible person cannot be identified at the scene, the police department may issue a warning to one of the other responsible persons identified in Section 9.37.010(a) or subsequently return to the scene and issue the warning to a then-present responsible person. Warnings given to responsible persons who do not reside at the premises in question shall be delivered by certified mail.

(Ord. 2005-20 § 2, 2005: Ord. 89-03 § 1, 1989).

9.37.030 COST RECOVERY FOR SPECIAL SECURITY SERVICES.

When the police department or fire department or other city emergency responder responds to a loud or unruly gathering at premises with a given address in the city within twelve months of a warning given to a responsible person for those premises pursuant to Section 9.37.020, or while any such warning remains in effect pursuant to Section 9.37.050, all responsible persons shall be jointly and severally liable for the city's costs of providing special security service for that response and all subsequent responses during that warning period.

(Ord. 2005-20 § 3, 2005: Ord. 89-03 § 1, 1989).

9.37.040 BILLING AND COLLECTION.

Charges for special security service shall include a reasonable charge for the emergency responder's time and actual costs of any equipment used or damaged in connection with the response, together with an additional thirty-three percent of the special security charge for administrative overhead. These charges shall be computed and a bill submitted to the responsible person(s). The chief of police shall promulgate notice and billing procedures for this purpose. The bill shall be a debt owed to the city and failure to pay that bill within thirty days is a violation of this code. If the city is obliged to initiate litigation or other proceedings authorized by Title 4 of this code to recover this debt, the responsible person shall be liable for:

(a) Costs of suit;

(b) Attorney's fees; and

(c) Costs of collection.

(Ord. 2005-20 § 4, 2005: Ord. 89-03 § 1, 1989).

9.37.050 VIOLATIONS/FINES.

(a) It shall be an infraction for a responsible person to conduct or allow a loud or unruly gathering on premises owned

by the responsible person or on premises rented by or to the responsible person. A third or subsequent violation within a twelve-month period shall constitute a misdemeanor.

(b) Fines.

(1) A first violation of this Section shall be punishable by a \$250 fine.

(2) A second violation of this section at a given address in the city within a given twelve-month period shall be punishable by a fine of \$500.

(3) A third or subsequent violation of this section at a given address in the city within a given twelve-month period shall be punishable by a fine of \$1,000.

(c) The fines prescribed at subsection (b) are in addition to any special security service charges that may be assessed pursuant to this chapter.

(d) The second, third or subsequent violation fines prescribed at subsections (b)(2) and (b)(3) are payable whether or not the responsible person at the time of the current loud or unruly gathering is the same person who was the responsible person for any prior loud or unruly gathering at those premises.

(e) The fine schedule prescribed at subsection (b) is a “rolling schedule” meaning that in calculating the fine payable the police department or city attorney shall count backward starting from the date of the most recent loud or unruly gathering to determine how many prior loud or unruly gatherings have taken place at the premises in question during the statutory twelve month period. A warning given pursuant to Section 9.27.020 shall remain in effect for the premises at a given address until a full twelve-month period has elapsed during which there have been no loud or unruly gatherings at those premises.

(Ord. 2005-20 § 5, 2005).

9.37.060 SERVICE OF ALCOHOLIC BEVERAGES TO MINORS.

The city council hereby finds that the service of alcohol to minors at loud and unruly gatherings and the consumption of alcohol by minors at loud or unruly gatherings has in the past and continues to pose a threat to the health and safety of all persons who reside in the city and also causes significant disruption of city residents’ quiet enjoyment of their households, especially in the city’s residential neighborhoods. In addition, such conduct on behalf of persons who serve alcohol to minors and minors who consume alcohol at loud or unruly gatherings results in the expenditure of a disproportionate percentage of the city’s police, fire and public safety resources which are underwritten primarily by general municipal taxes paid to the city by its taxpayers and residents. It is therefore the policy of the city council that in responding to loud or unruly gatherings, the city police department shall strictly enforce any and all applicable state laws pertaining to the service of alcohol to minors, and the consumption of alcohol by minors, and with respect to minors in possession of alcohol, the police department shall establish a “no tolerance” protocol by which the police department contacts, or causes the minor’s school to contact, the minor’s parents or legal guardians whenever the minor is found to be in possession of alcohol or narcotics or found to be intoxicated at a loud or unruly gathering. Where the minor’s school has an internal student disciplinary office any such incident shall likewise be reported to that office.

(Ord. 2005-20 § 6, 2005).

CITY OF SANTA ROSA

Chapter 10-28 MINOR ALCOHOL OFFENSE/LOUD PARTIES

10-28.010 Title.

The title of this chapter shall be “Minor Alcohol Offense/Loud Parties.” (Ord. 1999 § 1 (part), 1992)

10-28.020 Definitions.

For the purpose of this chapter, the following definitions shall apply:

(A) “Juvenile” means any minor child under the age of 18 years old.

(B) “Minor” means any person, under the age of 21 years old.

(C) “Party, gathering or event” means a group of persons who have assembled or are assembling for a social occasion or a social activity.

(D) “Person responsible for the event” means and includes, but is not limited to:

(1) The person who owns, rents, leases or otherwise has control of the premises where the party, gathering or event takes place;

(2) The person in charge of the premises;

(3) The person who organized the event.

If the person responsible for the event is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the costs incurred for police services pursuant to this chapter.

(E) "Police services" means and includes the salaries and benefits of the Police Officers for the amount of time actually spent in responding to, or in remaining at, the party, gathering or event and the administrative costs attributable to the incident; the actual costs of any medical treatment to injured Officers; the cost of repairing any damaged City equipment or property; and the costs arising from the use of any City equipment in responding to or remaining at a party, gathering or event. (Ord. 2999 § 1 (part), 1992)

10-28.030 Unlawful gatherings on private property when alcohol is served to minors.

Except as permitted by Article I, Section 4, of the California Constitution, no person shall suffer, permit, allow or host a party, gathering or event at his or her place of residence or other private property, place or premises under his or her control where five or more persons under the age of 21 are present and alcoholic beverages are in the possession of, or are being consumed by, any person under the age of 21 years. (Ord. 2999 § 1 (part), 1992)

10-28.040 Police services at parties, gatherings or events requiring a second response.

When any party, gathering or event occurs on private property and a police officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, the person(s) responsible for the event will be held liable for the cost of providing police services during a second or follow-up response by the police, after a first warning to the person(s) responsible for the event to control the threat to the public peace, health, safety or general welfare. (Ord. 2999 § 1 (part), 1992)

10-28.050 Unsupervised possession of alcohol unlawful.

Except as permitted by state law, no person under the age of 21 years shall have in his or her possession, or consume, any alcoholic beverage at any place not open to the public, unless that person is being supervised by his or her parent or legal guardian. (Ord. 2999 § 1 (part), 1992)

10-28.060 Police service fees.

The amount of police service fees shall be deemed a debt owed to the City by the person responsible for the event and, if juveniles, their parents or guardians. Any person owing such fees shall be liable in an action brought in the name of the City for recovery for such fees, including reasonable attorney fees. (Ord. 2999 § 1 (part), 1992)

Useful Websites

Alcohol Policy Information System. Hosting Underage Drinking Parties: Criminal Liability.

http://alcoholpolicy.niaaa.nih.gov/index.asp?SEC={8BECDA97-22E1-4D4F-9CAAF70CA490CE27}&Type=BAS_APIIS.

Connecticut Coalition to Stop Underage Drinking. Changing Policy: Ordinance Against Underage Drinking. http://www.preventionworksct.org/ctcoal_chgppl/ctcoal_ordinance.html

Accessed 9/1/05.

San Diego County Policy Panel on Youth Access to Alcohol. The San Diego County Social Host Movement: A Case Study.

<http://www.alcoholpolicypanel.org/PDF/Social%20Access%20Case%20Study%202004.pdf>

Accessed 9/1/05



VENTURA COUNTY LIMITS

A Community Partnership for Responsible Alcohol Policies & Practices

Ventura County Behavioral Health Department
300 North Hillmont Avenue, Ventura, California 93003

www.venturacountylimits.org