

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS ADDING CHAPTER 47 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 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 Sheriff's Department 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) 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 the expenditure of public safety resources of the County.
- (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 responsibility on property owners and other 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 responsible for the nuisances created by such gatherings and the costs associated with responding to 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 definitions shall govern the construction of this chapter:

- (a). “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine from whatever source or by whatever process produced.
- (b). “Alcoholic beverage” means and includes alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, liquor, wine, 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). “Loud or unruly gathering” means a party or gathering or event of five (5) or more persons of which two (2) or more are minors at a residence or other private property conducted in such a manner as to constitute 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, excessive traffic, obstruction of public streets by crowds or vehicles, public drunkenness or unlawful public consumption of alcohol or alcoholic beverages, assaults, batteries, fights, domestic violence or other disturbances of peace, vandalism, litter, and any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare
- (d). “Law enforcement officer” means peace officers employed by the County of Santa Barbara.
- (e). “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.
- (f). “Responsible person” means and includes, but is not limited to: (1) the person(s) who owns, rents, leases or otherwise has control or right of possession of the residence or other private property where the loud or unruly gathering takes place; (2) the person(s) in charge of the premises; (3) the person(s) who organized, supervised, officiates, conducts or controls the loud or unruly gathering; (4) the person(s) receiving money or other consideration for granting access to the loud or unruly gathering; or (5) any other person(s) who accepts responsibility for such loud or unruly gathering.
- (g). “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 a loud or unruly gathering, 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 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.
- (h). “Underage Person” means any person under the age of twenty-one (21) years old.

Sec. 48-3. Prohibited acts and exceptions.

It shall be a civil violation and a public nuisance for any responsible person to conduct, aid, allow, permit, or *host* a loud or unruly gathering at a residence or other private property if at such loud or unruly gathering any possession or consumption of alcohol or alcoholic beverages by any minor(s) occurs. This section shall not apply to the extent such conduct: (1) is 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.

Sec. 48-4. Service of citation.

(a). Any law enforcement officer shall have the authority to issue an administrative citation for violation of Section 48-3 on the responsible person(s) for the loud or unruly gathering. The citation shall be personally served on or mailed by certified mail to the responsible person(s). If the officer is unable to identify immediately the responsible person(s), a notification of maintenance of a public nuisance property shall be mailed by certified mail to the owner(s) of the property as identified on the tax assessor's roll. Said notice shall inform such property owner(s) that he or she shall be held liable as the responsible person for any penalties under this chapter if any additional violation of Section 48-3 occurs at the property during the next twelve (12) months.

(b). If the responsible person is the property owner of the residence or other private property and resides on the premises, the property owner shall be held liable as a responsible person as set forth in Section 48-4(a).

(c). If the responsible person is the property owner of the residence or other private property but does not reside on the property and is otherwise not a responsible person pursuant to Section 48-2(f) (2-5), the property owner shall not be held liable as a responsible person pursuant to Section 48-4(a).

Sec. 48-5. Penalties.

Except as provided herein, the remedies for violation of Section 48-3 shall be as set forth in this chapter. In addition, the county shall have the power to abate the public nuisances in any manner that is provided for in this code or as permitted by state or federal law, either in law or equity.

Sec. 48-6. Administrative Penalties.

(a). Penalties.

1. A first violation of Section 48-3 shall be punishable by an administrative penalty of two hundred fifty dollars (\$250.00), provided however, that said penalty for such responsible persons who are first time offenders of the chapter may be suspended upon proof of completion, within sixty (60) days of receipt of the notice of violation, of a recognized counseling program, such as teen court or an alcohol rehabilitation program, as may be designated by the County from time to time.

2. A second violation of Section 48-3 at the same residence or other private property, or by the same responsible person shall be punishable by an administrative penalty of five hundred dollar (\$500.00); provided, however, that said penalty for such responsible persons who are second time offenders of the chapter may be reduced to a two hundred fifty dollar (\$250.00) fine upon proof of completion, within sixty (60) days of receipt of the notice of violation, of a recognized counseling program, such as teen court or an alcohol rehabilitation program, as may be designated by the County from time to time.

3. A third or subsequent violation of Section 48-3 at the same residence or other private property, or by the same responsible person shall be punishable by an administrative penalty of one thousand dollars (\$1000.00).

(b). The second, third or subsequent violation penalties prescribed at subsections (a)(2) and (a)(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.

(c). The penalty schedule prescribed at subsection (b) is a "rolling schedule" meaning that in calculating the penalty payable, the county 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 twelve (12) month period.

(d). The amount of the penalty shall be deemed a valid debt owed to the county by the responsible person(s) for the loud or unruly gathering and, if under the age of eighteen (18), their parents or legal guardians.

(e). The penalties prescribed for a violation of Section 48-3 are in addition to any response costs that may be assessed pursuant to this chapter.

Sec. 48-7. Dispersal of gathering.

Any law enforcement officer who determines that a violation of Section 48-3 of this chapter has occurred, shall have the authority to direct the responsible person(s) for the loud or unruly gathering to disperse immediately, or if the officer is unable to identify immediately the responsible person(s), to command all those attending the loud or unruly gathering to disperse immediately.

Sec. 48-8. Administrative Appeal.

(a) A violation of section 48-3 shall be subject to the administrative penalties provided for in section 48-6 and shall also be subject to the administrative appeal procedures set forth below.

(b) Any person upon whom an administrative penalty is imposed pursuant to 48-6 may appeal such 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 citation or any other date of mailing of a notice of determination of the 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 administrative penalty;

(2) A brief statement of the material facts which the appellant claims supports his or her contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;

(c) An appeal of an administrative penalty imposed for violations of Section 48-3 shall be heard by a person appointed by the County to act as the hearing examiner. The administrative 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 administrative 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. 48-9. Enforcement and Collection of Administrative Fines.

When an administrative penalty becomes a final order under section 48-8 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. 48-10. Judicial review.

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

Sec. 48-11. Warning notice—Liability for response costs.

When a response pursuant to this chapter occurs, the law enforcement officer at the scene, in addition to the issuance of any citation, administrative penalty, or arrest that he or she may feel is appropriate, shall (1) notify the responsible person(s) for the loud or unruly gathering either verbally or in writing that such person(s) shall be held personally liable, jointly and severally, for the county's cost of providing any follow-up or additional police response during the next twelve (12) months for violation of Section 48-3 of this chapter; or (2) if the officer is unable to identify immediately the responsible person(s), mail such notification by certified mail to the owner(s) of the property as identified on the tax assessor's roll.

Sec. 48-12. Collection of response costs.

The response costs shall be computed and a bill shall be submitted to the responsible person(s). The county shall promulgate notice and billing procedures for this purpose. The amount of the response costs shall be deemed a valid debt owed to the county by the responsible person(s) for the loud or unruly gathering and, if under the age of eighteen (18), their parents or legal guardians. Collection of response costs shall be as set forth in Section 48-9.

Sec. 48-13. Reservation of legal options.

Nothing in this chapter shall be construed as a waiver by the county of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures. The procedure provided for in this chapter is in addition to any other statute, ordinance or law, civil or criminal. This chapter 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 chapter.

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