

DEPARTMENT: Board BY: Supervisor Fritz PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Waive First Reading and Introduce Ordinance Waive Second Reading and Adopt Ordinance adding a new chapter to the County Code entitled "Social Host Accountability".

BACKGROUND AND HISTORY OF BOARD ACTIONS:

This matter was brought before the Board of Supervisors for discussion on October 23, 2007. This proposed ordinance would add a new chapter to the Mariposa County Code to make it a misdemeanor to permit, host, or allow a party where an underaged person(s) is being served and/or consuming alcohol on private property. A misdemeanor is punishable by a fine of up to \$1000 or by imprisonment for a period not to exceed six months, or by both fine and imprisonment.

It is illegal under state law for an underage person to possess alcoholic beverages in public, but not in a place that is not open to the public. The ordinance does not apply when a parent is supervising the consumption of alcohol. Currently, there is no law which makes it unlawful to host a party where alcohol is served to or consumed by underage persons. There are laws which address the symptoms of underage drinking at parties, such as laws against littering, urinate in public, driving under the influence, and vandalism. However, these laws do not hold the host responsible for the impact their party has had on the public or the underage person(s).

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? () Yes (x) No Current FY Cost: \$ Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded
Amount in Budget: \$ List Attachments, number pages consecutively
Additional Funding Needed: \$ Ordinance
Source:
Internal Transfer
Unanticipated Revenue 4/5's vote
Transfer Between Funds 4/5's vote
Contingency 4/5's vote
() General () Other

CLERK'S USE ONLY:

Res. No.: 11/27 Ord. No. 1042 Ayes: 5
Vote - Ayes: Noes:
Absent:
() Approved
Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
No Opinion
Comments:

The foregoing instrument is a correct copy of the original on file in this office.

Date:
Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: Deputy

CAO: [Signature]



COUNTY of MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

JANET BIBBY, CHAIR
LYLE TURPIN, VICE CHAIR
BRAD ABORN
DIANNE A. FRITZ
BOB PICKARD

DISTRICT III
DISTRICT II
DISTRICT I
DISTRICT IV
DISTRICT V



MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: SUPERVISOR FRITZ

FROM: MARGIE WILLIAMS, Clerk of the Board *MW*

SUBJECT: Waive First Reading and Introduce Ordinance Adding a New Chapter to the County Code Entitled "Social Host Accountability"

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on November 6, 2007

ACTION AND VOTE:

Waive First Reading and Introduce Ordinance Adding a New Chapter to the County Code Entitled "Social Host Accountability"

BOARD ACTION: Following discussion, (M)Fritz, (S)Turpin, the first reading was waived and the Ordinance was introduced. The Clerk of the Board read the title of the Ordinance into the record. Ayes: Unanimous.

Cc: Jim Allen, Sheriff
Bob Brown, DA
Superior Court
File

MARIPOSA COUNTY ORDINANCE NO. 1042

AN ORDINANCE ADDING A NEW CHAPTER 9.13 TO THE MARIPOSA COUNTY CODE ENTITLED "SOCIAL HOST ACCOUNTABILITY"

WHEREAS, the Board of Supervisors of the County of Mariposa desire to adopt an ordinance adding a new Chapter 9.13 to the Mariposa County Code, and

WHEREAS, the occurrence of parties on private property where alcohol is served to or consumed by underage persons is harmful to the underage persons and is a threat to public health, safety, quiet enjoyment of property, and the general welfare of the communities where such parties are held, and

WHEREAS, underage persons often obtain alcoholic beverages at parties held at a private residence or 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 of alcoholic beverages and that persons responsible for the occurrence of parties 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, and

WHEREAS, control of parties on private property where underage persons are being served or consuming alcohol is necessary because such activity poses a threat to the peace, health, safety, or general welfare of the public and law enforcement's ability to abate gatherings where alcohol is served to or consumed by underage persons on private property will result in a decrease in abuse of alcohol by underage persons, physical altercations, and injuries, neighborhood vandalism, and excessive noise disturbance thereby improving public safety, and

WHEREAS, problems associated with such parties at which alcoholic beverages are served to or consumed by underage persons are difficult to prevent and deter unless law enforcement has the legal authority to direct the host to disperse the party, and

WHEREAS, law enforcement, fire and other emergency response services personnel have and are required to respond, sometimes on multiple occasions, to parties on private property at which alcoholic beverages are served to or consumed by underage persons and responses to such parties result in a disproportionate expenditure of public safety resources and cause a drain of staff, leaving other areas of the County with inadequate protection, and

WHEREAS, persons held responsible for abetting or tolerating parties will be more likely to properly supervise and stop such conduct of parties held on private property under their possession and control, and

WHEREAS, the prohibitions found in this chapter are reasonable and expected to deter the consumption of alcoholic beverages by underage persons by holding persons who knowingly allows service or consumption by underage persons responsible, and

WHEREAS, the penalties provided by this chapter will reduce the costs of providing law enforcement, fire and other emergency response services to parties by providing for the recovery from social hosts of costs associated with providing law enforcement, fire and other emergency response services to parties where alcoholic beverages are served to or consumed by underage persons,

NOW, THEREFORE, THE BOARD OF SUPERVISORS of Mariposa County, a political subdivision of the State of California, does ordain as follows:

SECTION I. A new Chapter 9.13 is hereby added to the Mariposa County Code to read as follows:

Section 9.13 .010 Findings and intent.

A. Minors often obtain, possess, or consume alcoholic beverages at parties held on private property under the control of a person who knows or should know of such conduct, but fails to stop it.

B. Underage consumption of alcoholic beverages poses an immediate threat to public health, safety and welfare in that it increases alcohol abuse by minors, physical altercations, violent crimes including rape and other sexual offenses, accidental injury, neighborhood vandalism, and excessive noise disturbance, all of which may require intervention by local law enforcement.

C. Law enforcement responses to disturbances involving underage consumption of alcoholic beverages at private parties frequently require the use of extensive resources. Further, when law enforcement personnel respond to disturbances at private parties it limits their ability to respond to other service calls in the community, thereby placing the community at increased risk. Law enforcement is not currently reimbursed for their expenses when called to a private party.

D. The prohibitions found in this chapter are reasonable and expected to deter the consumption of alcoholic beverages by minors by holding responsible persons who encourage, are aware of, or should be aware of, the illegal conduct yet fail to prevent it.

9.13.011 Definitions.

The terms used in this chapter have the meaning provided by state law except as expressly provided herein.

A. An "adult" is any person over the age of twenty-one (21) years.

B. An "alcoholic beverage" includes any liquor or solid material intended to be ingested by a person which contains ethanol, also known as ethyl alcohol, drinking alcohol, or alcohol, including, but not limited to, alcoholic beverages as defined in section 23004 of the Business and Professions Code, intoxicating liquor, malt beverage, beer, wine, spirits, whiskey, rum, vodka, cordials, gin, and brandy, and any mixture containing one or more alcoholic beverages. Alcoholic beverages include a mixture of one or more alcoholic beverages whether found or ingested separately or as a mixture.

C. "Enforcement services" represent the actual amount of time spent by law enforcement personnel responding to, or in remaining at, a party, gathering, or event at which a minor obtains, possesses, or uses alcoholic beverages including, but not limited to, the salaries and benefits of such personnel; the actual cost to medical treatment incurred by such personnel; administrative

costs attributed to the incident; the cost of repairing and/or replacing any damaged County property; and any other allowable costs related to the enforcement of this ordinance.

D. A “family gathering” is a gathering where each minor present is supervised by his or her parent or legal guardian.

E. A “legal guardian” is a person who is lawfully vested with the power and charged with the duty of taking care of a minor.

F. A “minor” is any person under the age of twenty-one (21) years.

G. A “parent” includes any person who is a natural parent, an adoptive parent, a foster parent, or a step-parent.

H. A “party” is a gathering or event at which a group assembles for a social occasion or activity at a private residence or private premises.

I. A “private residence” is the place where one actually lives or has his or her home.

J. “Private premises” is privately owned land, including any appurtenances or structures on the land.

K. A “social host” is a person who permits a party where one or more minors consume one or more alcoholic beverages on property owned or controlled by the person.

9.13.012 Prohibition.

A. No person who owns or controls private property shall knowingly allow a party to take place or continue on such private property if a minor at the party obtains, possesses, or consumes any alcoholic beverage and the person knows or reasonably should know, by taking all reasonable steps to prevent alcoholic beverage consumption by the minor as described in subdivision B of this section, that the minor has obtained, possesses, or is consuming alcoholic beverages at the party.

B. It is the duty of any person having control of any private property, who knowingly hosts, permits or allows a gathering on the property to take all reasonable steps to prevent the consumption of alcoholic beverages by any minor at the gathering. Reasonable steps include, but are not limited to, controlling access to alcoholic beverages, controlling the quantity of alcoholic beverages, verifying the age of persons at the gathering by inspecting driver’s licenses or other government issued identification cards, and supervising the activities of minors at the gathering.

9.13.013 Prima facie evidence.

Whenever a person having control of the residence or premises is present at that residence or premises at the time that a minor obtains, possesses, or consumes any alcoholic beverage, it shall be prima facie evidence that such person had the knowledge or should have had the knowledge, that the minor obtained, possessed, or consumed an alcoholic beverage at the party.

9.13.014 Protected activities.

This ordinance shall not apply to legally protected religious activities, gatherings of family members, the service to or consumption of alcoholic beverages which occurs exclusively between an underage person and his or her parents or legal guardian.

9.13.015 Exempt locations.

This section shall not apply to any location or place regulated by the California

Department of Alcohol and Beverage Control.

9.13.016 Separate violation for each incident.

Each incident in violation of section 9.1 3.012 shall constitute a separate offense.

9.13.017 Enforcement authority.

The District Attorney and the Sheriff are authorized to administer and enforce the provisions of this chapter. The District Attorney and the Sheriff may exercise any enforcement powers provided by law.

9.13.018 Enforcement remedies.

A. Any person who violates section 9.1 3.012 of this chapter is guilty of a misdemeanor.

B. Any person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to a minor is guilty of a misdemeanor.

C. Any person who violates subdivision A or B, above, by purchasing an alcoholic beverage for a minor and the minor 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 person who violates subdivision A or B above, by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of up to One Thousand Dollars (\$1000). Any person who has been found to have violated this chapter may be allowed by the Courts to serve up to 40 hours of community service as an alternative penalty to paying any fine imposed. The community service program shall retain the discretion to admit or deny admission as such program standards and policies allow. Failure to gain admission to a community service program or failure to complete such program after admission shall restore the original fine imposed without further right to appeal.

E. Any person who violates subdivision C shall be punished by imprisonment in a county jail for a term not to exceed one year, by a fine not exceeding One Thousand Dollars (\$1000), or by both imprisonment and fine.

F. The County of Mariposa does not waive its right to seek other legal remedies or procedures. This section in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of the conduct currently regulated, nor do they limit in any way the prosecution's ability to initiate and prosecute criminal prosecution for any violation of the criminal offense arising out of the same circumstances.

G. Pursuant to California Civil Code section 171 4.1, any act of willful misconduct of a minor that results in injury or death to another person or an injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

H. A social host who serves alcoholic beverages to a minor guest may be held liable for injuries sustained by third parties, including County law enforcement personnel, as a result of the minor guest's negligence.

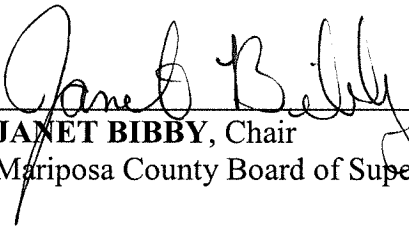
I. A social host shall be liable for the cost of providing enforcement services in response to a party in which minors have obtained, possessed, or consumed alcoholic beverages. If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the

validity of the remaining portions of this ordinance. The County of Mariposa hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof, irrespective of the fact that any one or more of such provisions be declared unconstitutional.

SECTION II: This Ordinance shall become effective thirty (30) days after final passage pursuant to Government Code §25123.

PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 27th day of November 2007 by the following vote:

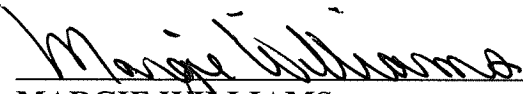
AYES: ABORN, TURPIN, BIBBY, FRITZ, PICKARD
NOES: NONE
ABSENT: NONE
ABSTAINED: NONE



JANET BIBBY, Chair
Mariposa County Board of Supervisors

ATTEST:

APPROVED AS TO FORM:



MARGIE WILLIAMS
Clerk of the Board



THOMAS P. GUARINO
County Counsel