

DATE: May 6, 2008
TO: Mayor and City Council
FROM: Chief of Police
SUBJECT: Social Host Ordinance

RECOMMENDATION

That Council approves and adopts a proposed Social Host Ordinance for inclusion in the City of Hayward Municipal Code.

SUMMARY

A Social Host Ordinance is needed to address the problem of underage drinking facilitated by adults. Recent events throughout the country, including in the City of Hayward, underscore that underage drinking is a problem. The primary purpose of the Social Host Ordinance is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, by deterring the service to and consumption of alcoholic beverages by underage persons. The ordinance seeks to achieve this purpose in two principal ways:

1. To make it an infraction or misdemeanor for social hosts who knowingly allow minors to obtain, possess, or consume alcoholic beverages at parties held at private residences or private premises,
2. To recover costs of law enforcement responses, and litigation if applicable.

BACKGROUND

The ordinance is needed for two reasons: law enforcement has inadequate enforcement authority to respond to underage drinking on private property and the risk of minors becoming involved in other crimes, either as victims or perpetrators, increases when preceded by underage drinking. In California, there is no law that makes it illegal for a minor to consume alcoholic beverages or to have alcoholic beverages in a place not open to the public. Without such a law or ordinance, underage drinking in private places is difficult for law enforcement to address. This new ordinance seeks to fill the gap and provide law enforcement with a more effective tool in dealing with the problem.

DISCUSSION

The Purpose of a Social Host Ordinance

A Social Host Ordinance is being proposed to increase adult responsibility for private parties involving underage consumption of alcohol. In a recent survey, 57% of local high school students reported drinking at friends' homes (*Combating Underage Drinking Survey, 1999*). Surprisingly, 30% of them reported they consumed alcohol at home with their parents' permission. Some parents host underage drinking parties for their teens with good intentions (i.e. it will keep them off the road), however this permissive attitude has often ended in tragedy. Most people think of underage drinking as a youth problem. However, whenever a young person drinks alcohol, there is an adult involved in some way, whether it is a retail store who sells to underage youth, or older siblings, friends or parents who provide the alcohol. Laws and resources are available to focus on underage drinking as a youth problem, but few remedies focus on adults who must be held accountable for the problem as well.

Studies have shown alcohol is the number one drug of choice for youth in America. Among the nation's 113 million drinkers, 10 million are underage (*Drug Strategies, 1999*).¹ Nearly one-third of high school students were found to be "Excessive Alcohol Users" by the 2000 *California Student Substance Use Survey*.² Also, alcohol-related deaths outnumber deaths related to all illicit drugs combined by four to one (*Drug Strategies, 1999*).

Parties Pose the Highest Risk for Underage Drinking

Underage drinking parties are usually large gatherings that occur in a variety of settings (homes, parks and beaches, open natural spaces, or rented locations). These parties pose a great risk to young people because of the number of drinkers involved and the large quantities of alcohol consumed. Statistics show these parties can often result in alcohol poisoning, traffic crashes, property damage, sexual assault, and other alcohol-fueled crime and violence. They also lead to other dangerous, risk-taking behaviors such as binge drinking, vandalism, and thefts.

The Hayward Police Department responds to rowdy parties where underage drinking is involved. In some cases, more than one response to the same party necessary—often beginning as a simple noise complaint but eventually growing out of control to the point that the alcohol use becomes a visible nuisance to the neighborhood.

Enormous Cost of Youth Alcohol Consumption

In California, the total cost of alcohol use by youth—including traffic crashes, violent crime, burns, drowning, suicide attempts, fetal alcohol syndrome, alcohol poisoning and treatment—is more than 6.5 billion dollars per year (*PIRE, 1999*).³ In the City of Hayward, costs for law enforcement calls to home parties is proportionally staggering and can exceed \$1,000 per

¹ Drug Strategies (1999). Keeping Score on Alcohol. Online source accessed 3/26/08 at <http://www.drugstrategies.org/keepingscore1999/index.html>

² California Student Use Survey (2000). Office of the Attorney General, CA Department of Alcohol and Drug Programs, CA Department of Education

³ Costs of Underage Drinking (1999). Pacific Institute for Research and Evaluation (PIRE). Online source accessed 3/26/08 at <http://www.udetc.org/documents/costunderagedrinking.pdf>

response to every call of a party or incident involving underage drinking, depending on the circumstances of the call and the resources needed for resolution. Reducing the need and number of police responses to unruly underage parties also increases the police department's readiness and ability to respond to other emergencies and service calls.

FISCAL IMPACT

There is no cost associated with the initiation of this ordinance as a tool for enforcement. The City may realize revenues as a result of fines associated with enforcement. A citation issued for violation of this ordinance results in a \$750.00 fine. A second violation results in a \$1,500 fine. A third or subsequent violation results in a \$2,500 fine. The number of citations issued for violations of this ordinance is difficult to predict and entirely dependent on compliance, and the number of calls for police services to handle such violations.

PUBLIC CONTACT / NEXT STEPS

Once adopted by the Council, the police department will initiate a public awareness effort through the local media about the existence and content of the ordinance. The Hayward Unified School District will also be asked to make students aware of the ordinance.

Prepared by:



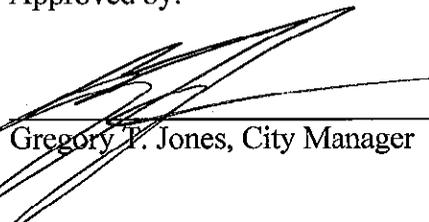
Darryl C. McAllister, Captain
Community Policing Commander

Recommended by:



Ron Ace, Interim Chief of Police

Approved by:



Gregory T. Jones, City Manager

Attachments: Draft Ordinance

DRAFT

NH
4/29/08

ORDINANCE NO. 08-

ORDINANCE ADDING ARTICLE 11 TO CHAPTER 4 OF
THE HAYWARD MUNICIPAL CODE, THE SOCIAL HOST
ACCOUNTABILITY ORDINANCE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS
FOLLOWS:

Section 1. Findings, Intent, and Purpose.

- (a) The City Council of the City of Hayward, pursuant to the City's police powers under Article XI, Sections 3 and 5 of the California Constitution, and the City Charter established pursuant to such sections, has the authority to enact and enforce laws that promote the public health, safety, and general welfare of its residents. The occurrence of loud or unruly gatherings on private property where alcoholic beverages are served to, consumed by, or in the possession of underage persons is harmful to the underage persons themselves, and is a threat to the public health, safety, or quiet enjoyment of residential property and the general welfare. 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 service to, possession by, and/or consumption of alcohol by underage persons.
- (b) Persons having possession or control of private property who are responsible for social gatherings on that property have failed to ensure that alcoholic beverages are neither served to, nor consumed by, underage persons at these gatherings. The City Council further finds that problems associated with social gatherings where alcoholic beverages are served to, or consumed by, underage persons are difficult to prevent and deter unless the Hayward Police Department has the legal authority to direct the host to disperse the gathering and to cite the responsible persons.
- (c) Law enforcement personnel have in the past been required to respond to unruly gatherings on private property where alcoholic beverages are served to, consumed by, or in the possession of underage persons. Law enforcement personnel have also received multiple service calls in the same calendar year concerning unruly gatherings at the same property. Such calls for service result in a disproportionate expenditure of public safety resources and delay official responses to other calls in the rest of the City. Additionally, underage drinking at such gatherings has resulted in disproportionately higher numbers of underage persons driving while intoxicated, increased social violence, and incidents of sexual assault.

- (D) An ordinance that imposes liability on property owners and other responsible persons for gatherings that allow underage drinking is necessary to deter and prevent such gatherings. Persons who actively or passively aid, allow, or tolerate such gatherings should be held liable for permitting such gatherings, the nuisances created by them, and the costs associated with responding to them.
- (f) The intent of this Ordinance is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, by deterring the service to and consumption of alcoholic beverages by underage persons, and reducing the costs to the public of providing police response services to unruly gatherings and gatherings of underage persons where alcohol is served, both in terms of monetary costs and availability of law enforcement personnel for other calls. These purposes are implemented by the imposition of administrative penalties for social hosts and landowners (including landlords) and the imposition of fees to recover the costs incurred by the City in providing law enforcement responses to gatherings where alcoholic beverages are served to, or consumed by, underage persons.
- (g) The City Council of the City of Hayward therefore determines that gatherings on private property where alcoholic beverages are served to, or consumed by, underage persons are a threat to the public peace, health, safety, and general welfare, and a public nuisance as they affect the entire City of Hayward community as well as the neighborhoods in which they occur.

Section 2. The following provisions are hereby adopted and added to Chapter 4 of the Hayward Municipal Code as Article 11:

"ARTICLE 11

"SOCIAL HOST ACCOUNTABILITY ORDINANCE

"SEC. 4-9.00. DEFINITIONS. For the purpose of this article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

- “(a) ‘Alcohol.’ The definition of “alcohol in Section 23003 of the California Business and Professions Code, as amended from time to time, shall apply to this Article. As of the introduction of this Article, Section 23003 defined “alcohol” to mean ‘ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.’
- “(b) ‘Alcoholic beverage.’ The definition of ‘alcoholic beverage’ in Section 23004 of the California Business and Professions Code, as amended from time to time,

shall apply to this Article. As of the introduction of this Article, Section 23003 defined "alcoholic beverage" to mean "alcoholic beverage includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, 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) 'Juvenile' means any person less than 18 years of age.

"(d) 'Minor' means any person less than 21 years of age.

"(e) '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 gathering occurs; and

"(2) The person who organizes or supervises or conducts the event or any other person(s) accepting responsibility for such a gathering.

"A 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 civil penalties and/or response costs. If the person responsible for the event is a juvenile, then the juvenile and the parents or guardians of the juvenile may be jointly and severally liable for the civil penalties or response costs pursuant to this chapter and/or for any administrative penalties set forth in this Article.

"(f) 'Public safety services' and/or 'response costs' means the costs associated with response, such as responses by law enforcement, fire, and other emergency response providers to loud or unruly gatherings, including but not limited to:

"(1) The portion of the costs of salaries and benefits of law enforcement, fire, and other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the 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 the use of any City equipment or property, and the cost of repairing any City equipment or property damaged in responding to, remaining at, or leaving the scene of a loud or unruly gathering; and

"(4) Any other costs recoverable in compliance with California Civil Code Section 1714.9.

“(g) ‘Unruly gathering’ means a party of gathering of two or more persons at a residence or other private property in the City at which alcoholic beverages are being consumed by any underage person when that party or gathering is being 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. Such conduct constituting a violation of law for purposes of this definition includes, but is not limited to: 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 the peace, vandalism, littering, or any other conduct that constitutes a threat to public health, safety, quiet enjoyment of residential property, or general welfare.

“SEC. 4-9.05. DUTY OF RESPONSIBLE PERSONS. It is the duty of the Responsible persons to not knowingly host, permit, or allow an underage or unruly gathering at a residence or other private property in the City of Hayward concerning which the Responsible person has a right of possession, and to take all reasonable steps to prevent the consumption of alcoholic beverages by any underage person at gatherings at such residence or other private property. Reasonable steps required pursuant to this section include, but are not limited to: controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages present at the gathering; verifying the age of persons attending the gathering by inspection drivers’ licenses or other government-issued identification cards to ensure that underage persons do not consume alcoholic beverages while at the gathering; and supervising the activities of underage persons at the gathering.

“SEC. 4-9.10. UNDERAGE OR UNRULY GATHERINGS ON PRIVATE PROPERTY UNLAWFUL. It is unlawful and a public nuisance for any Responsible persons to knowingly host, permit, or allow an underage or unruly gathering to occur at private property in the City of Hayward concerning which the responsible person has a right of possession where at least one underage person consumes an alcoholic beverage. For purposes of this Article, a Responsible person knowingly hosts, permits, or allows an underage or unruly gathering where at least one underage person consumes an alcoholic beverage whenever the Responsible person is aware or should reasonably have been aware that an underage person has consumed an alcoholic beverage at such gathering, had the Responsible person taken all reasonable steps to prevent consumption of alcoholic beverages by underage persons. Violation of this section by any responsible person is subject to the civil and/or administrative penalties set forth in this Article, in addition to recovery of response costs, and any other applicable penalties under applicable law. It shall be prima facie evidence that the responsible person knew or should have known of both the underage or unruly gathering and the consumption of alcoholic beverages by underage persons at the gathering if the responsible person is present on the property at any point during the gathering. To the full extent permitted by law, owners of properties shall remain responsible persons liable for violations of this Article on such property, regardless of any contract or agreement regarding the property that purports to provide otherwise.

“SEC. 4-9.15. EXCEPTION. This Article does not apply to conduct involving the use of alcoholic beverages that is protected by Article I, Section 4 of the California Constitution.

“SEC. 4-9.20. CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS. The Chief of Police (or his or her designee), at his or her discretion, may immediately issue a citation for this civil violation upon evidence of the violation. There is no requirement of a first warning in order for the Chief of Police to issue this civil citation. A first violation of this section shall result in a citation with a \$750.00 fine. A second violation shall result in a citation with a \$1,500 fine. A third or subsequent violation shall result in a citation with a \$2,500 fine.

The Chief of Police (or his or her designee) shall give notice of a violation of this section by issuing a citation to any and all responsible persons identified by the Chief of Police within 30 days of the violation. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.

The civil fine prescribed above is in addition to any response costs for public safety responses that may be assessed pursuant to this Article.

“SEC. 4-9.25. IMPOSITION OF RESPONSE COSTS FOR PUBLIC SAFETY RESPONSES. In addition to any civil fine imposed for violation of this section, when any loud or unruly gathering where alcohol is served to, consumed by or in the possession of minors occurs on public or private property and a public safety officer determines that conditions described in Section 4-9.10 exist, the public safety officer shall notify the responsible party or parties of his/her/their liability for the cost of providing public safety services (i.e., fire, ambulance, police and other emergency providers). The response costs for public safety responses shall be separate and distinct from a citation and fine for a civil violation described in Section 4-9.20.

“SEC. 4-9.30. ADMINISTRATIVE PENALTIES. Taking into consideration the age and/or financial ability of the responsible person(s) to pay, the hearing office may impose, in addition to or in lieu of civil fines and/or response costs in Sections 4-9.20 and 4-9.25:

- “(a) Community service work on behalf of the City; and/or
- “(b) Training, counseling, or classes that are relevant to the purpose of this Article.
- “(c) Failure to complete the administrative penalties as directed will result in that penalty or penalties being converted to civil fines and/or response costs as set forth herein without further right to appeal.

“SEC. 4-9.35. HEARINGS ON THE IMPOSITION OF CIVIL FINE, RESPONSE COSTS, AND/OR ADMINISTRATIVE PENALTIES – APPEALS . Any person subject to a civil fine pursuant to Section 4-9.20, response costs pursuant to Section 4-9.25, or administrative penalties pursuant to Section 4-9.30 shall have the right to request an administrative hearing. The request for the hearing shall be filed in accordance with the time frames set forth in Hayward Municipal Code Section 1-3.150 for appeals. The hearing shall be conducted in accordance with the provisions of Hayward Municipal Code Section 1-3.170.

“SEC. 4-9.40. CIVIL FINE AND RESPONSE COSTS – DEBT TO CITY – ENFORCEMENT. The amount of a civil fine and/or response costs shall be deemed a debt owed to the City by the person(s) found in violation of Section 4-9.10 and therefore liable for a fine under Section 4-9.20 and fees under Section 4-9.25, and, if that person is a juvenile, then also his/her parents or guardians. Any person owing such fine and/or fees shall be liable in an action brought in the name of the City for recovery of such fine and/or fees. These recovery costs may include reasonable attorneys’ fees incurred in the action if the City prevails, as the City reserves the right to seek to recover reasonable attorneys’ fees, on a case-by-case basis, pursuant to California Government Code Section 25845, subdivision (c). In those cases in which the City seeks to recover reasonable attorneys’ fees, the other party may likewise do so. Civil fines recovered by the City pursuant to this chapter shall be placed in the budget of the Hayward Police Department to be used for the purpose of reducing minor access to alcohol.

“SEC. 4-9.45. ENFORCEMENT AUTHORITY. A loud or unruly gathering at a residence or other private property at which service to or consumption of alcohol or alcoholic beverages by minors occurs constitutes a public nuisance and an immediate threat to public health and safety and shall be summarily abated by the Chief of Police by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and/or a citation under this chapter as well as a citation and/or arrest under any other applicable ordinances or state statutes.

“SEC. 4-9.50. CUMULATIVE REMEDIES. Nothing in this chapter shall be construed as a waiver by the City of Hayward of any right to seek reimbursement for actual response costs through other legal remedies or procedures.

The civil fines and fees imposed by this Article do not preclude other potential civil actions or criminal prosecution under any other provision of law, including but not limited to Penal Code Sections 272 and 415 and Business and Profession Code Sections 25658, 25658.2 and 25662. This Article shall not be interpreted in any manner that conflicts with the laws or constitutions of the United States or the State of California.

Section 3. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the__ day of_____, 2008, by Council Member_____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the__ day of_____, 2008, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward