

INTRODUCTION TO SAMPLE SOCIAL HOST ORDINANCE CONCERNING POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSONS AT OR ON A PRIVATE RESIDENCE OR OTHER PRIVATE PROPERTY

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The following sample social host ordinance recognizes that:

- Persons under 21 years of age primarily obtain alcoholic beverages through social sources such as parties. The parties are held in homes, garages, apartments, hotel and motel rooms, outdoors in vacant lots and on agricultural or rural lands—on all types of private property. Parties are a common location for binge drinking by teenagers and college students.
- Consumption of alcoholic beverages at parties on private property exposes persons under 21 who attend the parties and the neighboring community to increased alcohol abuse by underage persons, accidental injury, driving under the influence of alcohol, injuries and death from motor vehicle crashes, violent crimes including physical fights and sexual assault, public drunkenness, vandalism, excessive traffic and noise, and obstruction of public streets, all of which may require intervention by local law enforcement.
- All persons have a responsibility to prevent the number and frequency of parties at which underage possession and underage consumption occur. Parents, landlords, tenants, hotel/motel operators, campground owners, social hosts, and young persons themselves share a responsibility to ensure that persons under 21 are not allowed to use private residences or other private property—apartments, condos, hotel rooms, campsites, etc.—to possess or consume alcoholic beverages.
- The social hosting of an underage drinking party poses an immediate threat to the public health, safety, and welfare and should be treated as a civil violation, a criminal violation, or a combination of both. The penalty should be sufficiently swift, certain, and severe to have a deterrent effect on underage drinking.
- Law enforcement responses to disturbances involving underage consumption of alcoholic beverages at parties at or on a private residence or other private property frequently require the extensive use of enforcement personnel, reducing resources from, and

increasing the crime risk in, other parts of a community. The ordinance allows communities to impose law enforcement costs incurred in responding to out-of-control parties on the persons most able to prevent them from occurring in the first place.

CHAPTER ___: SOCIAL HOST ORDINANCE CONCERNING POSSESSION AND CONSUMPTION OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSONS AT OR ON A PRIVATE RESIDENCE OR OTHER PRIVATE PROPERTY

SEC. 1. FINDINGS AND INTENT.

The [City/Village/Town/Township/County/Borough/Parish of _____] finds and declares that:

- a. Underage persons often possess or consume alcoholic beverages at parties or social gatherings held on private residences and other private property under the control of a person who knows or reasonably should know of such conduct but fails to prevent it.
- b. Underage consumption of alcoholic beverages at parties poses an immediate threat to the public health, safety and welfare in that it increases alcohol abuse by underage persons, physical altercations, violent crimes including rape and other sexual offenses, accidental injury, neighborhood vandalism, litter, public drunkenness, excessive noise disturbance, excessive traffic, obstruction of public streets, driving under the influence of alcohol, and motor vehicle crashes involving and causing injury and/or death, all of which may require intervention by law enforcement.
- c. Law enforcement responses to disturbances involving underage consumption of alcoholic beverages at parties at or on a private residence or other private property frequently require the use of extensive resources. Further, when law enforcement personnel respond to disturbances at parties at or on a private residence or other private property, 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 party at or on a private residence or other private property.
- d. The prohibitions found in this chapter are reasonable and expected to deter the possession and consumption of alcoholic beverages by underage persons by holding responsible persons who encourage, are aware of, or should be aware of, the illegal conduct yet fail to prevent it. In addition, the revenue received by the [City/Village/Town/Township/County/Borough/Parish of _____], after

cost reimbursement, will be directed toward law enforcement strategies and prevention programs in the community.

SEC. 2. DEFINITIONS.

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

- a. "Alcoholic beverage" includes any solid, liquid or gas 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 the State of _____ Statutes, intoxicating liquor, malt beverage, beer, wine, spirits, liqueur, whiskey, rum, vodka, cordials, gin, and brandy, and any mixture containing one or more alcoholic beverages. Alcoholic beverage includes a mixture of one or more alcoholic beverages whether found or ingested separately or as a mixture. [*This provision should be drafted in light of existing definitions of "alcoholic beverage" found in the relevant state statute and/or municipal code.*]
- b. "Dwelling unit" includes, without limitation:
 - (1) Any single- and multi-family residence, duplex, apartment, or condominium.
 - (2) Any mobile home, whether rent is paid for the mobile home, the land upon which the mobile home is located, or both.
 - (3) Any recreational vehicle, if located in a mobile home park or recreational vehicle park, whether rent is paid for the recreation vehicle, the land upon which it is located, or both.
- c. "Enforcement services and costs associated with enforcement services" represent a flat fee or amount of time spent by law enforcement personnel in responding to, or in remaining at, a party, gathering, or event at which an underage youth possesses or consumes alcoholic beverages including, but not limited to, the salaries and benefits of such personnel; the cost of medical treatment incurred by such personnel; administrative costs attributable to the incident; the cost of repairing and/or replacing any damaged [City/Village/Town/Township/County/Borough/Parish] property; and any other allowable costs related to the enforcement of this ordinance.
- d. "Family gathering" is a gathering where each underage person present is supervised by his or her parent or legal guardian or of-age spouse who is also present at the gathering.

- e. "Underage person(s)" is any person under the age of twenty-one (21) years.
- f. "Legal guardian" is a person who is lawfully vested with the power and charged with the duty of taking care of an underage person.
- g. "Other private property"¹ is:
 - (1) A hotel or motel room,
 - (2) An assembly hall or meeting room,
 - (3) A common room of a dwelling unit used for a party (e.g., recreation room of an apartment building or a common room of a condominium complex),
 - (4) A site in a privately-owned campground,
 - (5) Privately-owned vacant lot,
 - (6) Privately-owned agricultural land, or
 - (7) Privately-owned rural land,

whether occupied on a temporary or permanent basis, whether occupied as a dwelling or for a party or other social function, and whether owned, leased, rented, or used with or without compensation.

"Privately-owned agricultural land" or "privately-owned rural land" includes all structures listed in subsection (l)(2) of this section; all lands listed in subsection (l)(3) of this section; and all water bodies listed in subsection (l)(4) of this section.

"Privately-owned vacant lot," "privately-owned agricultural land," and "privately-owned rural land" includes a motor vehicle, camper, trailer, boat, water craft, or marine vessel located on the vacant lot, agricultural or rural land.

¹ Private college or university dormitories and fraternities, types of private property that are not specifically listed in the model ordinance, may be located on campus or off campus. Enforcement of a social host ordinance with respect to these properties likely would be affected by college/university policy and likely would be carried out principally by campus security personnel, not necessarily a municipality's law enforcement officers. Efforts to apply a social host ordinance to college/university property should be done in collaboration with college and university officials, policy, and procedure.

- h. "Parent" includes any person who is a natural parent, an adoptive parent, a foster parent, or a step-parent.
- i. "Party" is a gathering or event at which a group assembles for a social occasion or activity.
- j. "Person who has a right of possession" of the private residence or other private property means:
 - (1) Owner of the private residence or other private property, meaning the record owner of the title to property as of the time of the party, wherever that person or entity may currently reside;
 - (2) Tenant or lessee of the private residence or other private property;
 - (3) Landlord of another person who has a right of possession in the private residence or other private property;
 - (4) Person(s) in charge of the private residence or other private property; and
 - (5) Social host.
- k. "Private residence" includes:
 - (1) A dwelling unit, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or for a party or other social function, and whether owned, leased, rented, or used with or without compensation.
 - (2) Structures on the residence other than the dwelling unit, such as a garage, studio, tent, cabana, gazebo, tree-house, boat house, boat dock, swimming pool, hot tub, sauna, includes hunting cabin, ice fishing hut, barn, granary, corn crib, tractor or equipment shed, tool shed, stable, or animal pen or shed.
 - (3) Land of the residence, whether improved or unimproved, such as a yard, patio, outdoor grilling or eating area, open fields, jetty, pier, breakwater, or lake shore.
 - (4) Water bodies on the residence, such as a pond, lake, river, or stream.

(5) A motor vehicle, camper, or trailer located on the residence.

(6) A boat, watercraft, or other marine vessel located on the residence.

l. "Religious gathering" is a gathering or event at which a group assembles for religious practice.

m. "Social host" means

(1) The person who organizes, supervises, officiates, conducts or controls a party at or on a private residence or other private property owned, leased or otherwise controlled by the person or

(2) The person receiving money or other consideration for granting access to a party at or on a private residence or other private property owned, leased or otherwise controlled by the person.

SEC. 3. PROHIBITION.

a. No person who has a right of possession of a private residence or other private property shall knowingly host, permit, or allow a party to take place or continue on such private residence or other private property if any underage person at the party provides, possesses or consumes any alcoholic beverage and the person knows or reasonably should know, by taking all reasonable steps to prevent alcoholic beverage possession or consumption by the underage person as described in subsection (b) of this section, that the underage person is possessing or consuming any alcoholic beverage at the party.

b. It is the duty of any person having a right of possession of a private residence or other private property, who knowingly hosts, permits or allows a party on the private residence or other private property, to take all reasonable steps to prevent the possession or consumption of alcoholic beverages by any underage person at the party. Reasonable steps include, but are not limited to,

(1) Controlling access to alcoholic beverages,

(2) Controlling the quantity of alcoholic beverages,

(3) Verifying the age of persons at the gathering by inspecting drivers' licenses or other government-issued identification cards, and

- (4) Supervising the activities of underage persons at the party.

SEC. 4. PRIMA FACIE EVIDENCE.

Whenever a person having a right of possession of a private residence or other private property is present at that private residence or other private property at the time that a underage person possesses or consumes any alcoholic beverage at a party at or on said property, it shall be prima facie evidence that such person had the knowledge, or reasonably should have had the knowledge, that the underage person possessed or consumed an alcoholic beverage at the party.

SEC. 5. PROTECTED ACTIVITIES.

- a. Nothing in this chapter should be interpreted to prohibit legally-protected religious practices held on a private residence or other private property that include the possession and/or consumption of alcohol. If an underage person leaves a religious gathering intoxicated and is found in public, however, then said furnishers of alcoholic beverages shall be held responsible in the same manner as furnishers at a non-religious gathering.
- b. Nothing in this chapter should be interpreted to prohibit any family gathering held on a private residence or other private property that involves the possession and/or consumption of alcoholic beverages by an underage person provided exclusively by his or her parent or legal guardian who is also present. If an underage person leaves such a family gathering intoxicated and is found in public, however, then said furnishers of alcoholic beverages shall be held responsible in the same manner as furnishers at a non-family gathering.

SEC. 6. SEPARATE VIOLATION FOR EACH INCIDENT.

Each incident in violation of Section 3 shall constitute a separate offense.

SEC. 7. ENFORCEMENT AUTHORITY.

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

SEC. 8. ENFORCEMENT REMEDIES.

[Communities may consider imposing civil only penalties, criminal penalties, or a combination of both.]

[Criminal Penalties-Monetary Fines and/or Imprisonment]

- a. Any person who violates section 3 of this chapter is guilty of a misdemeanor.
- b. Any person who knowingly sells, furnishes, provides, gives, or causes to be sold, furnished, provided, or given away, any alcoholic beverage to an underage person is guilty of a misdemeanor.
- c. Any person who violates subsection (a) or (b) above, by purchasing an alcoholic beverage for an underage person and the underage person thereafter consumes the alcoholic beverage 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 subsection (a) or (b) above, by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to an underage person 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.
- e. Any person who violates subsection (c) above 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.

[Civil Monetary Penalties]

- f. Any person who violates section 3 of this chapter has committed a public nuisance constituting an immediate threat to public health and safety warranting summary abatement and is guilty of a civil violation.

[Subsection (g): Option 1]

- g. Any person who violates section 3 of this chapter shall be fined a civil money penalty of not exceeding [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.

[Subsection (g): Option 2]

[g. In the event a juvenile is found to be a social host as defined by this ordinance, the juvenile may perform community service and pay the city of _____ administrative fees, if any, as an alternative to paying the civil money penalty with the prior written consent and approval of the [Police Chief/Sheriff] or designee. The number of community service hours required to satisfy a civil money penalty is as follows: _____. The parents or legal guardians of a juvenile found to have violated Section 3 may also request to have that juvenile serve the required hours of community service as described in this subsection, and pay the city of _____ administrative fees, if any, as an alternative penalty to paying the applicable civil money penalty. The [Police Chief/Sheriff] or designee shall retain the discretion to approve the community service suggested by the juvenile. Upon approval of the [Police Chief/Sheriff] or designee to perform community service, the juvenile shall complete the required hours within one year of approval, and shall submit proof of completion to the [Police Chief/Sheriff]. Failure to receive approval to perform community service or failure to complete the required hours of service shall result in imposition of the applicable civil money penalty, which is immediately payable. No reduction in the penalty is authorized for completion of less than the required hours of community service as set forth in this subsection.

h. Violations of section (3) of this chapter shall be noticed by citation, issued by the [Police Chief/Sheriff]. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation, the time for requesting that hearing and right to appeal.

[Civil Liability for Negligence]

i. *[This provision may or may not be true in a given jurisdiction. In many states, social hosts are immune from civil liability for negligence based on the furnishing of an alcoholic beverage or causing an alcoholic beverage to be furnished to an underage person.]* A person who violates section 3 of this chapter who serves alcoholic beverages to an underage guest may be held liable for injuries sustained by third parties, including [City/Village/Town/Township/County/Borough/Parish] law enforcement personnel, as a result of the underage guest's negligence.

[Civil Response Costs Recovery-in Addition to Criminal or Civil Monetary Fines and Penalties Above]

j. Any person who violates section 3 of this chapter [shall/may] be liable for the cost of providing enforcement services [in response/in responding multiple times] to a party in which underage persons have

possessed or consumed alcoholic beverages. Such costs include reasonable attorneys' fees in the event of litigation.

SEC. 9. 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.

SEC. 10. EFFECTIVE DATE.

This ordinance shall take effect on _____.