

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jeff Matson, Captain 

DATE: July 25, 2006 (CC Meeting of 08/02/06)

SUBJECT: Consider Ordinance of the City Council of the City of Moorpark Adding Chapter 9.32 to the Moorpark Municipal Code Pertaining to a Social Host Ordinance Which Will Impose a Fine For Persons Hosting Gatherings of Underage Drinkers

SUMMARY

The Ventura County Sheriff's Department in cooperation with the Ventura County Behavioral Health Department has taken the lead countywide to urge all cities in Ventura County and the County of Ventura to adopt a social host ordinance to combat underage drinking. Currently eight cities in the county have adopted or will shortly adopt a social host ordinance, as has the County of Ventura. The purpose of this ordinance is to discourage underage drinking at private gatherings where most underage drinking occurs. A violation of this ordinance would be a civil penalty only and does not constitute a criminal violation.

BACKGROUND

Alcohol is the drug of choice for youth and the leading contributing cause of death among teenagers. It is involved in the deaths of more teens than all other illicit drugs combined —by a four-to-one ratio. Underage drinking is a factor in nearly half of all teen automobile crashes and 50 to 65 percent of youth suicides. Alcohol abuse is also linked to a large number of sexual assaults, homicides, suicides and fatal injuries involving teens. It is also a major factor in unprotected sex among youth. All of these problems are magnified by early onset of teen drinking: the younger the drinker, the worse the problem. Nationally, the social cost of underage drinking has been estimated at \$53 billion including \$19 billion from traffic crashes and \$29 billion from violent crime.

When underage youth drink, they tend to drink more heavily and recklessly than adults. National research indicates that most underage drinking takes place in private settings, such as home parties. The occurrence of such parties is harmful to the underage persons themselves and a threat to public health, safety, and general welfare. To reduce binge drinking by our youth, access to alcohol in private settings must be addressed.

Under current law, problems associated with parties where alcoholic beverages are served to or consumed by underage persons are difficult for law enforcement to prevent or disperse. When held responsible for encouraging or tolerating underage drinking, hosts will be more likely to properly supervise or stop such conduct at parties held on property under their control.

The intent of this Ordinance is to protect the health, safety, and the welfare of our youth. An Ordinance that imposes liability on property owners and other responsible persons for the nuisances created by underage drinking at parties is an important step in deterring and preventing such parties. The attached ordinance provides a mechanism to hold hosts financially responsible for the costs of responding to gatherings on private property where underage persons are consuming alcohol.

DISCUSSION

The City of Moorpark consistently ranks as the safest city in the county and one of the safest cities for its size in the state. Underage drinking remains a concern in our community. In Moorpark, calls for service with respect to loud and unruly house parties increased from 310 in 2004 to 337 in 2005.

In 2005, approximately 13% of underage drivers involved in collisions in Moorpark were found to be under the influence of alcohol. In Moorpark, consistent with the national average, two thirds of sexual assaults occur within a house party setting. Underage drinking is also a contributing factor in violent assaults. The adoption of a social host ordinance will assist in diminishing underage drinking and hold those who condone this activity among our youth accountable.

The proposed ordinance is similar to the Ventura County Social Host Ordinance. It provides that a party or gathering with two or more underage persons present and where alcohol is available, may subject the host of the party to a civil fine. Although the ordinance focuses on adults hosting underage drinking gatherings, the host may also be a juvenile, as well as a renter, lessee or owners of the property or the parent of a juvenile. If a juvenile is the responsible party then the parents or guardians of that 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. This ordinance therefore imposes vicarious as well as direct liability upon a responsible person. The ordinance also allows for recovery of response costs for any subsequent responses to the same residence or other private property within a twelve month period. The ordinance also allows for the police to order the gathering to be dispersed.

STAFF RECOMMENDATION

1. Introduce Ordinance No. ____ for first reading.
2. Schedule second reading and adoption for August 16, 2006.

Attachment: Draft ordinance

ATTACHMENT

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, AMENDING TITLE 9, PUBLIC PEACE, MORALS AND WELFARE TO ADD CHAPTER 9.32 SOCIAL HOST REQUIREMENTS TO THE MOORPARK MUNICIPAL CODE

WHEREAS, it is in the City's interest to protect the public from underage drinking and set standards for fines; and

WHEREAS, at its meeting of August 2, 2006, the City Council considered an ordinance to establish rules, procedures and fines for underage drinking as an amendment to Title 9, Public Peace, Morals and Welfare specifically adding Chapter 9.32 Social Host to the Moorpark Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 9.32 of the Moorpark Municipal Code is hereby added, in its entirety, as shown in Exhibit A.

SECTION 2. If any section, subsection, sentence, clause, phrase, part of portion of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection sentence, clause, phrase, part of portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance, shall enter this ordinance in the book of original ordinances of the City of Moorpark, shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted, and shall, within fifteen (15) days after passage and adoption thereof, cause the same to be published once in the Moorpark Star, a daily newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED the ____ day of ____ 2006.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

EXHIBIT A

**TITLE 9
PUBLIC PEACE, MORALS AND WELFARE
CHAPTER 9.32
SOCIAL HOST ORDINANCE**

Sections:

- 9.32.010 Short Title.**
- 9.32.020 Legislative Findings.**
- 9.32.030 Purposes.**
- 9.32.040 Definitions.**
- 9.32.050 Responsibility for Proper Property Management.**
- 9.32.060 Penalties for Violation of Ordinance.**
- 9.32.070 Recovery of Response Costs.**
- 9.32.080 Billing and Collection.**
- 9.32.090 Reservation of Legal Options.**
- 9.32.100 Request for Administrative hearing.**
- 9.32.110 Severability.**
- 9.32.120 Protected Activities.**

9.32.010 Short Title.

This Ordinance shall be known as the "Social Host Ordinance."

9.32.020 Legislative Findings.

The City Council finds as follows:

- a. The City of Moorpark, 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. Any unruly gathering shall constitute a public nuisance, as an immediate threat to public health and safety, quiet enjoyment of residential property and general welfare;
- d. 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;

e. 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;

f. 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 Moorpark Police Department/Ventura County Sheriff 's Department has the legal authority to direct the host to disperse the gathering;

g. 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;

h. 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;

i. 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 Moorpark, which are underwritten by general municipal taxes paid to the City by its taxpayers and residents and delaying police responses to regular and emergency calls to the rest of the City.

j. The intent of this Chapter 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. Any such gathering as defined by this ordinance shall be deemed to be a public nuisance.

9.32.030 Purposes.

The purposes of this Chapter 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.

9.32.040 Definitions.

For the purposes of this Chapter, 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; and
 - 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 Chapter. To incur liability for response costs imposed by this Chapter, 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.

9.32.050 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 Moorpark 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.

9.32.060 Penalties for Violation of Chapter.

- a. It shall be a violation of this Chapter for any responsible person to conduct, aid, allow, permit or condone a loud or unruly gathering at a residence or other private property.
- b. Notwithstanding any provision of Chapter 1.16 to the contrary, the City may issue and administrative citation for any violation of this Chapter with a fine of \$1,000 (unless another fine amount is set by City Council resolution for any violation of this Chapter), which fine amount shall be in addition to any recovery of response costs that might be imposed under Section 9.32.070.
- c. Any second, third or subsequent violations of this ordinance 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.
- d. The fine and any response costs imposed is a "rolling schedule" meaning that in calculating the costs payable the City 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 Chapter 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.
- e. The fines set forth in this Section may be appealed pursuant to Section 9.32.100. The payment of any such fines shall be stayed upon any timely appeal.

9.32.070 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 Moorpark 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 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 Moorpark, 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 Moorpark assesses response services costs pursuant to this section. If a responsible person cannot be identified at the scene, the official may issue a warning to one or more persons identified in *Section 9.32.040 (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 or certified mail.

9.32.080 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 9.32.070* 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 or certified mail within fourteen (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 this Chapter 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 of Moorpark within thirty (30) days of the date of the notice. The payment of any such costs shall be stayed upon a timely submission of a request for an Administrative Hearing made pursuant to *Section 9.32.100*.

The failure of any person to pay a fine or penalty assessed shall be collected pursuant to Chapter 1.16 Administrative Citation, Section 1.16.090 Collection of unpaid fines and penalties.

9.32.090 Reservation of Legal Options.

Nothing in this Chapter shall be construed as a waiver by the City of Moorpark of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures, including *Noise in*

Residential Zones, Chapter 9.28, Section(s) 9.28.010, 9.28.020, 9.28.030 and 9.28.040. 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.

9.32.100 Request for Administrative Hearing.

Any person receiving an administrative citation may contest the citation pursuant to Chapter 1.16 Administrative Citation, Section 1.16.100, Section 1.16.110, Section 1.16.120 and Section 1.16.130.

9.32.110 Severability.

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

9.32.120 Protected Activities.

This Chapter shall not apply to activities protected by articles 1, section 4 of the California Constitution or the 1st or 14th Amendment of the United States Constitution.