

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 9.40,  
MAUI COUNTY CODE, RELATING TO SOCIAL HOST LIABILITY

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The Council finds that in accordance with Chapter 281-101.5, Hawaii Revised Statutes, ~~it is illegal for an~~ ~~no~~ adult ~~to~~ ~~may~~ provide ~~or allow~~ ~~consumption of~~ intoxicating liquor to a person under twenty-one years of age ~~for~~ ~~consumption~~. The Maui County Council finds that underage persons have consumed intoxicating liquor, controlled substances, and marijuana at social gatherings at residences or other private property. This ordinance imposes ~~provides for~~ strict liability upon ~~for~~ a responsible person who is found ~~by clear and convincing evidence~~ to have hosted a gathering ~~where at which~~ an underage person possesses or consumes an intoxicating substance.

SECTION 2. Title 9, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“Chapter 9.40**

**SOCIAL HOST LIABILITY**

**Sections:**

<b>9.40.010</b>	<b>Purpose.</b>
<b>9.40.020</b>	<b>Definitions.</b>
<b>9.40.030</b>	<b>Prohibition against a gathering where an underage person possesses or consumes an intoxicating substance.</b>
<b>9.40.040</b>	<u>Administrative enforcement</u> <del>Recovery</del> <del>of response costs.</del>

**9.40.050** Appeal procedure and standards~~Civil penalties.~~

**9.40.060** Administration~~Administrative citations and appeals.~~

**9.40.010 Purpose.** A. The purposes of this chapter are to:

1. Protect public health, safety, and general welfare by imposing strict liability upon a responsible person who conducts, aids, allows, permits, or facilitates knowingly hosts~~a gathering where an underage person possesses or consumes an intoxicating substance.~~

2. Reduce the costs of providing police, fire, and other emergency response services to such gatherings by requiring where an underage a responsible person to reimburse these response costs possesses or consumes an intoxicating substance by imposing strict liability against a responsible person who hosts such a gathering.

**9.40.020 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

“Chief” means the chief of police or the chief’s designee.

“Gathering” means a group of two or more persons at or on a residence or other private property.

“Intoxicating substance” includes:

1 means the same as the term is defined in section 281-1 of the Hawai‘i Revised Statutes. “Controlled substance” as defined in section 329-1, Hawaii Revised Statutes.

2. “Intoxicating liquor” as defined in section 281-1, Hawaii Revised Statutes.

3. “Marijuana” and “marijuana concentrates” as defined in sections 329-1 and 712-1240, Hawaii Revised Statutes.

~~“Landlord” means the owner, lessor, sublessor, assigns or successors in interest of the dwelling unit or the building of which it is a part and any agent of the landlord.~~

“Minor” means any person under eighteen years of age.

“Property oOwner” means the same as the term is defined in section 19-04.040 of this code one or more persons, jointly or severally, in whom is vested:

1. All or any part of the legal title to property; or

2. All or any part of the beneficial ownership and a right to present use and enjoyment of the property; and includes a mortgagee in possession.

“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.

“Response costs” mean the costs associated with response by police, fire, and other emergency response providers to a gathering where an underage person possesses or consumes an intoxicating substance, such as: 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 such a gathering, and the administrative costs attributable to the response; 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 such a gathering; the cost of repairing any County equipment or property damaged, and the cost of the use of any equipment, in responding to, remaining at, or leaving the scene of such a gathering.

“Responsible person” means a person with a right of possession in the residence or other private property ~~on which a gathering where an underage person possesses or consumes an intoxicating substance occurs,~~ such as a property owner, tenant, or lessee, ~~who~~ : an owner of the residence or other private property; a tenant or lessee of the residence or other private property; the person in charge of the residence or other private property; and the person ~~who organizes, supervises, officiates, conducts, aids, allows, permits, or facilitates a or controls the gathering where an underage person possesses or consumes an intoxicating substance or any other person accepting responsibility for such a gathering.~~

“Underage person” means any person under twenty-one years of age.

**9.40.030 Prohibition against a gathering where an underage person possesses or consumes an intoxicating substance.** A. A gathering where an underage person possesses or consumes an intoxicating substance ~~at a residence or other private property~~ is prohibited.

B. A responsible person will be strictly liable and subject to this chapter’s civil penalties ~~who knowingly conducts, aids, allows, permits or facilitates a gathering~~ where an underage person possesses or consumes an intoxicating substance ~~substance at a residence or other private property will be strictly liable and subject to this chapter’s civil penalties.~~ It shall not be a defense to this section that the responsible person believed the underage person at the gathering was twenty-one or more years of age.

C. The following are exemptions from this section’s prohibitions:

1. An intoxicating substance provided to an

underage person as an ingredient in a medicine prescribed by a licensed physician for medical treatment of the underage person~~This section does not apply to any location regulated by the department of liquor control.~~

2. An intoxicating substance provided to an underage person as part of a ceremony of a recognized religion~~Where a gathering where an underage person possesses or consumes an intoxicating substance is a result of criminal trespass, a responsible person does not commit a first violation under this chapter. The person who owns or otherwise legally controls the residence or private property will be notified of any violation of this chapter involving criminal trespass and will be considered a responsible person for subsequent violations that occur at the same residence or private property within twelve months.~~

3. Possession or consumption of an intoxicating substance by an underage person as allowed by law~~A landlord may be notified of the second and subsequent violations of this chapter that occur at the same location within twelve months, but will not be considered a responsible person.~~

4. This section does not apply to any location regulated by the department of liquor control.

~~D.— For purposes of this section, a “gathering” means a group of two or more persons at or on a residence or other private property where one or more persons is underage and is found either to be in possession of an intoxicating substance or to have consumed an intoxicating substance.~~

**9.40.040 Administrative enforcement.** A. In addition to any enforcement by criminal prosecution, if the chief determines that a responsible person violated any provision of this chapter, the chief must serve the responsible person by mail with proof of mailing or personal delivery, with a notice of violation and order pursuant to this chapter and such administrative rules as the chief may adopt.

B. The notice of violation and order must include at least the following information:

1. Date of the notice.
2. Name and address of the person noticed.
3. The section number of the provision or rule that has been violated.
4. The nature of the violation.
5. The location and date of the violation.
6. The order must require the person to cease and desist of the violation and pay a civil fine of \$200 for a first violation, \$500 for a second violation, and \$1,000 for a third violation within a twelve-month period.

7. In addition to the civil fine, for subsequent violations occurring within the same twelve-month period, the order may require reimbursement of response costs.

8. If the responsible person is a minor, the minor's parent or legal guardians will be liable for the civil penalties imposed hereunder.

9. The order must advise the person that the order shall become final unless an appeal is filed with the police commission within thirty days after the date of its mailing or delivery.

C. Effects of order; right to appeal. The order shall become final unless an appeal is filed with the police commission within the thirty-day period. However, an appeal to the police commission shall not stay any provision of the order.

D. Collection of unpaid civil fines. In addition to any other procedures for the collection of civil fines available to the County by law or rules of the court, the County may add unpaid civil fines imposed pursuant to this chapter to any County taxes, fees, or charges, except for residential water or sewer charges.

E. Judicial enforcement of order. The chief may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the chief need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed, and that the fine imposed has not been appealed in a timely manner nor paid.

~~**9.40.040—Recovery of response costs.** A. Any responsible person who is found by clear and convincing evidence to have violated this chapter may be required to reimburse the County for all public safety response costs incurred in connection with a second response to the same premises within a year of the first response, and any subsequent response within a year of the second response, due to the violation.~~

~~B.—Response costs are the costs associated with responses by police, fire, and other emergency response providers to gatherings where underage persons possess or consume intoxicating substances, such as: 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 such gatherings, and the administrative costs attributable to the response; 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 such a gathering; 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 such a gathering.~~

~~The County must notify the person in writing of the imposition of costs and expenses and the process for appeal.~~

~~C.— If the responsible person is a minor, the parents or guardians of that minor, and the minor will be jointly and severally liable for response costs.~~

~~D.— All response costs and penalties for which the responsible person may be liable may become a lien on the residence or other private property on which the violation has occurred.~~

~~E.— The council, by resolution, may establish the cost for reimbursement of response costs to the County for violations of this chapter.~~

#### **9.40.050 Appeal procedure and standards.**

Pursuant to the charter of the county and in accordance with this chapter, the police commission shall hear and determine appeals of this chapter. An appeal may be granted only if the commission finds one of the following:

1. That the order was based on an erroneous finding of a material fact or erroneously applied the law.

2. That the order was arbitrary and capricious in its application.

3. That the order was a manifest abuse of discretion.

~~**9.40.050— Civil penalties.** A. Any responsible person who is found by clear and convincing evidence to have violated any provision of this chapter will be strictly liable and fined \$200 for a first violation, \$500 for a second violation, and \$1000 for a third violation within a twelve-month period.~~

~~B.— The County must notify the responsible person in writing of the imposition of such civil penalty and the process for appeal. If the responsible person is a minor, the minor and his or her parents or guardians will be jointly and severally liable for the civil penalties imposed hereunder.~~

~~C.— Any responsible person found to have violated this chapter may request community service in lieu of paying the civil penalty on appeal.~~

~~D.— In addition to any other procedures for the collection of civil fines available to the County by law or rules of the court, the County may add unpaid civil fines imposed pursuant to this chapter to any County taxes, fees, or charges, except for residential water or sewer charges.~~

**9.40.060 AdministrationAdministrative citations and appeals.** A. The chief of police will administer this chapter; except the chief may designate a social host administrator, who may exercise the chief's authority under this chapter, to the extent

authorized by the chief.

B. This chief may adopt administrative rules to carry out the provisions of this chapter~~Any responsible person aggrieved by a determination of the chief of police or the social host administrator may appeal the determination by filing a written notice of appeal with the board of variances and appeals within thirty days after notice of the determination.”~~

SECTION 3. In printing this bill, the County Clerk need not include the underscoring.

SECTION 4. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

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STEPHANIE M. CHEN  
Department of the Corporation Counsel  
County of Maui  
2019-0065/2020-1235  
GET-60 Social Host Liability Ord