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COUNTY COUNCIL
COUNTY OF MAUI
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WAILUKU, MAUI, HAWAII 96793
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November 20, 2020

MEMO TO: Moana M. Lutey
Corporation Counsel

F R O M: Michael J. Molina, Chair **Mike Molina**
Governance, Ethics, and Transparency Committee

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Date: 2020.11.20 15:36:17 -1000

SUBJECT: **SOCIAL HOST LIABILITY REGULATIONS** (GET-60)

May I please request you revise the attached proposed bill, entitled "A BILL FOR AN ORDINANCE ESTABLISHING A NEW CHAPTER 9.40, MAUI COUNTY CODE, RELATING TO SOCIAL HOST LIABILITY," as discussed at the Governance, Ethics, and Transparency Committee meeting of November 17, 2020, taking into account the following:

1. Please review the definition of "intoxicating substance" as defined in proposed Maui County Code Section 9.40.020 and determine whether the definition of "intoxicating liquor," as defined in Section 281-1, Hawaii Revised Statutes, should be referenced instead. Please consider the more appropriate term and ensure consistency in use throughout the proposed bill.
2. Please consider use of "gathering" versus "party" and ensure consistency in use throughout the proposed bill.
3. Please consider the proposed amendments and comments made by the Department of the Prosecuting Attorney at the November 17, 2020, meeting, including:
 - Add the following underscored language to proposed Maui County Code Section 9.40.030(B): "A responsible person who knowingly conducts, aids, allows, permits or facilitates a gathering will be strictly liable where an underage person

Moana M. Lutey
November 20, 2020
Page 2

possesses or consumes an intoxicating substance at a residence or other private property will be strictly liable and subject to this chapter's civil penalties."

- Add an exception for minors to possess or consume alcohol in an authorized religious ceremony.

May I further request you transmit the revised proposed bill **no later than November 24, 2020**, as I intend to further discuss and possibly recommend passage of the bill at the December 1, 2020, GET Committee meeting. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Shelly Espeleta at ext. 7134, or Pauline Martins at ext. 8039).

get:ltr:060acc01:ske

Attachment

cc: Stephanie Chen, Deputy Corporation Counsel

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, no adult may provide intoxicating liquor to a person under twenty-one years of age for consumption. This ordinance provides for strict liability for a responsible person who is found by clear and convincing evidence to have hosted a gathering 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:

- | | |
|-----------------|--|
| 9.40.010 | Purpose. |
| 9.40.020 | Definitions. |
| 9.40.030 | Prohibition against a gathering where an underage person possesses or consumes an intoxicating substance. |
| 9.40.040 | Recovery of response costs. |
| 9.40.050 | Civil penalties. |
| 9.40.060 | 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 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 gatherings where an underage person 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:

“Intoxicating substance” means the same as the term is defined in section 281-1 of the Hawai‘i 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.

“Owner” means 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.

“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: 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, or controls the gathering 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 who knowingly conducts, aids,

allows, permits or facilitates a gathering where an underage person possesses or consumes an intoxicating substance at a residence or other private property will be strictly liable and subject to this chapter's civil penalties.

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

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

2. 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. 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.

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 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 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 Administrative 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. 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:

/s/ Stephanie M. Chen

STEPHANIE M. CHEN

Department of the Corporation Counsel

County of Maui

2019-0065/2020-1235

GET-60 Social Host Liability Ord