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Mayor

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November 25, 2020

To: Michael J. Molina, Chair  
Governance, Ethics, and Transparency Committee

From: Stephanie Chen, Deputy Corporation Counsel

SUBJECT: Social Host Liability (GET-60)

Dear GET Chair Molina,

Thank you for the opportunity to provide comments on the proposed social host ordinance during the November 17, 2020, Government, Ethics, and Transparency Committee meeting. The suggestions and feedback received from the Committee members and Department of the Prosecuting Attorney have been helpful in further vetting this matter.

I would like to thank the Committee and the Department of the Prosecuting Attorney for fully reviewing the proposed ordinance and for offering comments and suggestions. After speaking further with the Department of the Prosecuting Attorney and litigation division of the Department of the Corporation Counsel, the bill has been significantly rearranged. Below please find an explanation of notable changes.

**SECTION 1.** The clear and convincing burden of proof requirement has been removed. As drafted, the applicable burden of proof is a preponderance of the evidence, or a “more likely than not” standard. The Committee expressed its intent to enact the ordinance based on strict liability, and after further review, the clear and convincing standard does not assist greatly in the Chief of Police’s implementation of the new ordinance.

**9.40.020 Definitions.** “Chief” has been added to the definitions section, referring to the Chief of Police or the Chief’s designee. “Intoxicating substance” has been revised per Committee member Rawlins-Fernandez’s correction of the previous error. It further includes “controlled substances”, “intoxicating liquor”, “marijuana” and “marijuana concentrates”.

“Property owner” has been changed for consistency with section 19.04.040, Maui County Code (“MCC”). “Landlord” has been removed since a “responsible person” must have a right of possession to the residence or other private property and must conduct, aid, allow, permit, or facilitate the gathering at which an underage person possesses or consumes an intoxicating substance. A landlord (in the sense of a property manager or rental agent with no right to possession) would likely not be implicated considering the requirements of the proposed ordinance. Accordingly, subsection 9.40.030C.3 was also removed. The reasons for this is that notifying a landlord/property manager of violations of the chapter does not add anything significant to the legal effect of the ordinance, and could result in the unintended consequence of discouraging a manager or agent from renting to a family with a child of a certain age.

**9.40.030 Prohibition against a gathering where an underage person possesses or consumes an intoxicating substance.** Please note that section 9.40.030.B. has been changed and no longer includes a knowledge requirement. This is based upon further consultation with the Department of the Prosecuting Attorney and the litigation division of the Department of the Corporation Counsel. Language specifying that lack of knowledge of a person’s age is not a defense has also been added.

According to feedback received at the last Committee meeting, several additional exceptions were added to section 9.40.030.C. These exceptions are based on exceptions listed in section 712-1250.5, Hawaii Revised Statutes. As noted above, the landlord notification provision has been removed from this subsection. To reiterate, there would be few if any instances where a landlord would be considered a “responsible person” under the proposed ordinance. The landlord would need to have a right of possession to the residence or other private property and would have to conduct, aid, allow, permit, or facilitate the gathering where an underage person possesses or consumes an intoxicating substance. In other words, if a landlord were also a “property owner,” under the proposed ordinance, the property owner may be considered a “responsible person.” Removal of the definition for “landlord” and the notification requirement simplifies and clarifies the bill.

In addition, based on feedback from Committee member King, the trespasser exception has been removed. A “responsible person” must have a right of possession, which necessarily excludes a trespasser.

**9.40.040 Administrative enforcement.** Based on procedural concerns and feedback received at the Committee meeting, section 9.40.040 was added to specify the process for administrative enforcement. The language is based on section 19.530.030, MCC, providing procedural consistency and clarity.

Please note that the joint and several liability provision has been removed from subsection 9.40.040B.8. As drafted, if the “responsible person” is a minor, the minor’s parents or legal guardians will be liable for the civil penalties. The option to perform community service in lieu of paying the civil fine is not generally an option for civil penalties and has therefore been removed. Supervision, insurance, liability, and MCC consistency are factors that were considered in deleting the provision.

After receiving the Committee’s comments and after additional consultation with my colleagues, the administrative appeal venue was changed to the Police Commission. The Board of Variances and Appeals (“BVA”) is technically an acceptable administrative review body, but consensus was that the Police Commission is more appropriate given the nature of the subject matter, with the authority for assignment of the additional duty based on section 8-12.2(5) of the Charter of the County of Maui.

**9.04.050. Appeal procedure and standards.** To provide additional clarity, appeal procedure and standards have been added. This section is based on section 19.520.040, MCC, but substitutes the Police Commission for the BVA.

Thank you for the opportunity to review the proposed ordinance; please let me know if you have questions or concerns.

Sincerely,

/s/ Stephanie M. Chen

Deputy Corporation Counsel

cc: Laura McDowell  
David Raatz

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 adult to provide or allow consumption of intoxicating liquor to a person under twenty-one years of age. 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 strict liability upon a responsible person who is found to have hosted a gathering where 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>	<b>Administrative enforcement.</b>
<b>9.40.050</b>	<b>Appeal procedure and standards.</b>
<b>9.40.060</b>	<b>Administration.</b>

**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 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 a responsible person to reimburse these response costs.

**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. “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.

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

“Property owner” means the same as the term is defined in section 19.04.040 of this code.

“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, 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 such equipment, in responding to, remaining at, or leaving the scene of such a gathering.

“Responsible person” means a person with a right of possession to the residence or other private property, such as a property owner, tenant, or lessee, who conducts, aids, allows,

permits, or facilitates a gathering where an underage person possesses or consumes an intoxicating substance.

“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 is prohibited.

B. A responsible person will be strictly liable and subject to this chapter’s civil penalties where an underage person possesses or consumes an intoxicating substance. 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.

2. An intoxicating substance provided to an underage person as part of a ceremony of a recognized religion.

3. Possession or consumption of an intoxicating substance by an underage person as allowed by law.

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

**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 parents 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.

#### **9.04.050. 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.

**9.40.060 Administration.** 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. The chief may adopt administrative rules to carry out the provisions of this chapter."

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 2020-11-25 Social Host Liability Ord



**RECEIVED**

By Dept of the Corporation Counsel at 4:35 pm, Nov 20, 2020

Council Chair  
Alice L. Lee

Vice Chair  
Ke'ani N W Rawlins-Fernandez

Presiding Officer Pro Tempore  
Tasha Kuma


Councilmembers  
Riki Hokama  
Kelly Takuya King  
Michael J. Molina  
Tamara Paltin  
Shane M. Simenoi  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

November 20, 2020

MEMO TO: Moana M. Lutey  
Corporation Counsel

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

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.063acc01.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:**

- |                 |  |
|-----------------|--|
| <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> | <b>Recovery of response costs.</b>   |
| <b>9.40.050</b> | <b>Civil penalties.</b>  |
| <b>9.40.060</b> | <b>Administrative citations and appeals.</b>   |

**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