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By Dept of the Corporation Counsel at 3:39 pm, Dec 10, 2020

REQUEST FOR LEGAL SERVICES

Date: December 10, 2020
From: Michael J. Molina, Chair
Governance, Ethics, and Transparency Committee

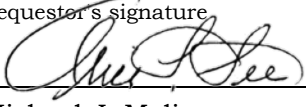
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie Chen, Esq.

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

Background Data: Please see the attached bill.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY
☐ OTHER:

Requestor's signature:  for CM Molina Michael J. Molina	Contact Person <u>Shelly Espeleta</u> (Telephone Extension: <u>7134</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): December 10, 2020
REASON: For possible posting on December 18, 2020 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: SMC	ASSIGNMENT NO. 2019-0065	BY: jcm
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☒ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): Made minor revisions, please
see the signed proposed
ordinance

DEPARTMENT OF THE CORPORATION COUNSEL

Date 12/11/2020

By /s/ Stephanie M. Chen

(Rev. 7/03)

get:ltr:060acc02:ske

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE ESTABLISHING 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 21 years of age, subject to the exemptions outlined in Section 712-1250.5(2), Hawaii Revised Statutes. The Council also finds that underage persons have consumed intoxicating liquor 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 possessed or consumed intoxicating liquor.

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 Purposes.**
- 9.40.020 Definitions.**
- 9.40.030 Prohibition against a gathering where an
underage person possesses or consumes
intoxicating liquor.**
- 9.40.040 Administrative enforcement.**
- 9.40.050 Appeal procedure and standards.**

9.40.060 Administration.

9.40.070 Review requirements.

9.40.010 Purposes. The purposes of this chapter are to:

A. 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 intoxicating liquor.

B. Reduce the costs of providing police, fire, and other emergency response services to such gatherings by requiring a responsible person to reimburse 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 ten or more persons at or on a residence or other private property.

“Intoxicating liquor” includes alcohol, brandy, whiskey, rum, gin, okolehao, sake, beer, ale, porter, and wine; and includes any spirituous, vinous, malt or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, in whatever form and of whatever constituency and by whatever name called, containing one-half of one percent or more of alcohol by volume, which are fit for use or may be used or readily converted for use for beverage purposes.

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

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

“Property owner” means the person owning the fee title or the person in whose name the legal title to the property appears by deed duly recorded in the office of the bureau of conveyances, or assistant registrar of the land court, or tax office of the County, and the person in possession of the property or building under claim of or exercising actions of ownership over the same for the person or as the executor, administrator, trustee, or guardian of the property.

“Residence or other private property” means a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, 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 intoxicating liquor, 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 County 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 on which a gathering occurs, such as a property owner, tenant, or lessee, who conducts, aids, allows, permits, or facilitates a gathering.

9.40.030 Prohibition against a gathering where an underage person possesses or consumes intoxicating liquor. A. A gathering where an underage person possesses or consumes intoxicating liquor 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 intoxicating liquor.

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

1. Intoxicating liquor provided to an underage person as an ingredient in a medicine prescribed by a licensed physician for medical treatment of the underage person.

2. Intoxicating liquor provided to an underage person as part of a ceremony of a recognized religion.

3. Possession or consumption of intoxicating liquor by an underage person as allowed by law, with the belief, which was reasonable under the circumstances, that the person under the age of twenty-one had attained the age of twenty-one.

4. Intoxicating liquor provided to an underage person with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the person under the age of twenty-one would not consume any portion of the intoxicating liquor.

5. Intoxicating liquor provided to an underage person with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the person under the age of twenty-one would consume the intoxicating liquor only in the presence of the parent or legal guardian.

6. 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 in accordance with 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. Only a single notice of violation and order may be issued for any incident within a twenty-four-hour 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 under this section.

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

C. The order will become final unless an appeal is filed with the police commission within the thirty-day period. An appeal to the police commission will not stay any provision of the order.

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 in accordance with this chapter to any County taxes, fees, or charges, except for residential water or sewer charges.

E. The chief may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued in accordance with this section. Where the civil action has been instituted to enforce the civil fine imposed by the 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 civil fine imposed has not been appealed in a timely manner or paid.

9.04.050 Appeal procedure and standards. A. In accordance with the charter and this chapter, the police commission may hear and determine appeals of this chapter.

B. The chief must adopt administrative rules within ninety days of the effective date of this Ordinance to carry out the provisions of this chapter.

C. An appeal may be granted only if the commission finds one of the following:

1. The subject decision or order was based on an erroneous finding of a material fact or erroneously applied the law.
2. The subject decision or order was arbitrary and capricious in its application.
3. The subject decision or order was a manifest abuse of discretion.

9.40.060 Administration. The chief 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.

9.40.070 Review requirements. A. The council must review this chapter every two years.

B. The chief must provide an annual report to the council on the status of this chapter that includes the following information:

1. The number of citations and notices of violations and orders issued.
2. The number of appeals filed, granted, and denied.
3. The number of individuals who received a notice of violation and order, grouped by area median income, if available.
4. Whether the person who received the notice of violation and order owns or rents the property where the notice of violation and order was issued.
5. The annual number of traffic accidents and traffic citations related to this chapter, including the ages of those involved."

SECTION 3. This Ordinance takes effect on July 1, 2021.

APPROVED AS TO FORM AND LEGALITY:

/s/ Stephanie M. Chen

STEPHANIE M. CHEN
Department of the Corporation Counsel
County of Maui
LF2019-0065, 2020-12-11