

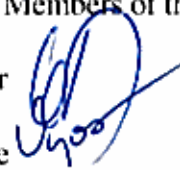




Agenda Item #: 06/1108.23-25

## Staff Report

### City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager 

**FROM:** Rod Uyeda, Chief of Police   
Randy Leaf, Captain 

**DATE:** February 6, 2007

**SUBJECT:** Consideration of an Ordinance that Holds Non-Commercial Individuals Responsible for Underage Drinking of Alcoholic Beverages on Property they Own, Lease or Otherwise Control, Known as a Social Host Ordinance.

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#### **RECOMMENDATION:**

Staff recommends that the City Council introduce and waive further reading of Ordinance No. 2096 which creates a Social Host Ordinance, and adds Chapter 4.128 to the Municipal Code of Manhattan Beach.

#### **FISCAL IMPLICATION:**

Implementation of this ordinance may require some additional staff time for enforcement and fine collection, however the increase is expected to be slight and accomplished by existing staff and resources.

#### **BACKGROUND:**

As part of the City Council's 2005-2007 Work Plan, the Police Department was tasked with researching a Social Host Ordinance as a means by which to address unruly parties and reduce underage drinking. A presentation was made before City Council on November 8, 2006, at which time they directed the City Attorney to draft a Social Host Ordinance.

#### **DISCUSSION:**

A Social Host Ordinance is a law that holds non-commercial individuals responsible for underage drinking events on property they own, lease, or otherwise control. Establishing a Social Host Ordinance can fill the gap in the law by prohibiting underage consumption of alcohol in both public places, and places not open to the public (i.e. private residences), with named exceptions such as religious services or with a parent or legal guardian.

### **Different Types of Social Host Ordinances**

Two main types of Social Host Ordinances have been enacted in Southern California cities – one which penalizes violators civilly, and one which criminalizes the violation as a misdemeanor.

Staff believes a civil liability Social Host Ordinance is the best course of action to take at this time due to the differences in processing criminal and civil citations, and the experiences of other cities that have criminal or civil Social Host Ordinances.

#### ***Criminal Liability Ordinances***

About two-thirds of the cities in San Diego County have established criminal liability ordinances.

San Diego was the first city to implement a Social Host Ordinance to help reduce underage drinking. However, in October 2004, San Diego's ordinance was deemed unconstitutional by a panel of Superior Court judges. Their ruling was on the grounds that the ordinance was "constitutionally impermissible" because of "the lack of *mens rea*" or criminal intent, and because it violated a person's right to due process. Under San Diego's ordinance, a person could be convicted even if they were unaware, or would not reasonably know, (1) that a party was taking place, or (2) that minors were present and consuming alcohol.

The City of San Diego has recently implemented a revised ordinance, approved by City Council in April 2006. The amendments (1) impose a duty on social hosts to take all reasonable steps to ensure that a minor is not consuming alcoholic beverages, and (2) add the requisite *mens rea*, or *knowledge* element. Further, the ordinance now clarifies the remedies available to the City of San Diego, including criminal prosecution, civil enforcement, and recovery of response costs.

Many San Diego County cities that patterned their ordinance after San Diego's ordinance have suspended enforcement of their Social Host Ordinances until they too can revisit and amend their ordinances. In the interim, ordinances in those cities remain on the books as a deterrent. The Los Angeles County District Attorney's Office was contacted regarding a criminal Social Host Ordinance. Their office felt that due to the number of issues being raised about the legality of the ordinance being attacked in San Diego, their office would recommend against the implementation of a similar ordinance.

#### ***Civil Liability Ordinances***

Ventura County cities have also established Social Host Ordinances - shifting penalties from criminal to civil, and charging administrative fines of \$1,000 or more for similar offenses.

The City of Ojai was the first city in Ventura County to adopt a Social Host Ordinance. The City of Ojai determined that a town of their size (population 8,000) could not afford a court challenge like the City of San Diego and created an ordinance that focused on civil liability instead and has been successful.

Other municipalities in Ventura County were also interested in pursuing a civil Social Host Ordinance. The County of Ventura's legal counsel noted that they were in favor of a civil citation because it is less likely to be contested, but is still effective in deterring adults from allowing underage drinking parties. Counsel also felt that the adoption of a civil liability ordinance would be easier to defend as the burden of proof is higher in criminal cases.

Additionally, agencies in Ventura County have found it difficult to prosecute local law infractions in a regional court setting; the civil liability ordinance has allowed them to bypass the court system for the most part. As Manhattan Beach files most criminal cases with the Los Angeles County District Attorney's office in the county courthouse in Torrance, we are similar to the agencies in Ventura County.

The civil Social Host Ordinance allows officers to proactively look at underage drinking at private parties and allow officers to cite irresponsible "hosts" before a party becomes unruly. This ordinance also gives the police an additional tool to remind any "host" the ramifications of underage drinking occurring at their party. Currently, officers can only address parties that are unruly or violate the city's noise ordinance.

A "host" is defined, but is not limited to, as the person or persons in control of the residence or other private property and can include owners and/or lessee, the host themselves, a parent or legal guardian, a minor who is also the "host" or a tenant. A landlord could also be considered a "host" provided that the landlord has received notice of prior unruly parties at their property involving underage drinking.

Thus far, more than fifteen civil citations have been issued and paid in Ventura County for a 100% success rate. The cities of Ojai, Thousand Oaks, Camarillo and County of Ventura have each successfully cited several "hosts" for violating their Social Host Ordinance and fines have been paid. The cities of Simi Valley, Fillmore, Moorpark and Santa Paula have also implemented civil Social Host Ordinances, but have not yet officially cited any persons yet. Law enforcement agencies from all of the cities have found the civil ordinance to be a useful tool.

The proposed ordinance is a complement to our existing Municipal Code 3.64, *Loud and Unruly Assemblages*, and allows for recovery of response costs for loud or unruly gatherings that require the police to respond two or more times within a 12-month period.

Any person cited under this ordinance will be entitled to an administrative hearing before an independent Hearing Officer, and may appeal the findings of the Hearing Officer to the Superior Court.

#### **Fines and Penalties of Social Host Ordinances**

Both criminal and civil ordinances present fines/penalties in two parts.

Part 1: A single-occasion house party where underage drinking is occurring is subject to a citation and fine (and possible imprisonment under the criminal liability law).

Part 2: If the police have to return to a home party location within one year of the first occurrence, the host would receive a citation and fine, and make restitution for the costs associated with responding to the unruly gathering, including costs incurred by law enforcement, fire, and/or other emergency response providers.

The majority of cities with civil Social Host Ordinances adopted fines of approximately \$1,000 for each offense (plus response costs). The City of Thousand Oaks, which also adopted a civil

ordinance, set their fine standard well above other cities in the County – raising fines to \$2,500 for the first offense, \$3,500 for the second and \$5,000 for the third and subsequent offenses (plus response costs). These were fines that the City Council of Thousand Oaks felt were more appropriate to sufficiently deter “hosts” and to convey the severity of the offense. Community service may be substituted in cases where the financial burden is too great or where the “host” is a juvenile.

The proposed civil Social Host Ordinance for Manhattan Beach has an administrative fine of \$1000 per responsible person, per incident not including response costs for the first incident within any consecutive 12 month period. For a second such incident within a consecutive 12 month period the fine is \$2000 and for a third such incident within any consecutive 12 month period, the fine is \$5000.

### **CONCLUSION**

The police department feels that a Social Host Ordinance will be another tool to assist them in the handling of unruly parties in addition to current laws that are available to deal with such disturbances. Currently, parties are only addressed by the police when they become loud and unruly. With a Social Host Ordinance, a party would be considered unruly should the police find underage drinking occurring and cite the host of such party immediately. This will likely prevent a number of parties from escalating to a neighborhood disturbance. There will also be a clear message sent throughout the community that underage drinking under the guise of a private party will not be tolerated and that “hosts” of such parties will be held accountable for such activity occurring on their property.

Attachments: A. Staff Report dated November 8, 2006  
B. Ordinance No. 2096



Agenda Item #: \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Tell and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Rod Uyeda, Chief of Police  
Randolph Leaf, Police Captain  
Julie Burris, Management Analyst

**DATE:** November 8, 2006

**SUBJECT:** Update on City Council's Work plan item to discuss a Social Host ordinance which would hold non-commercial individuals responsible for underage drinking of alcoholic beverages at events on property they own, lease or otherwise control.

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### RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction regarding the drafting of a Social Host Ordinance.

### FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

### BACKGROUND:

As part of the City Council's 2005-2007 Work Plan, the Police Department was tasked with researching a Social Host Ordinance; similar to what exists in San Diego and Ventura Counties, as an additional tool to help address unruly parties and underage drinking.

### DISCUSSION:

A Social Host Ordinance is a law that holds non-commercial individuals responsible for underage drinking at parties on property they own, lease, or otherwise control. Purchase, possession or consumption of alcohol by minors in public or commercial settings is already prohibited under state law. However, state law does not prohibit youth consumption of alcohol on private property. Establishing a Social Host Ordinance can fill the gap in the law by providing law enforcement a tool to help address the problem of underage drinking at parties.

There would be exceptions in any such ordinance to protect family and cultural events where parents or guardians give their permission for their children to take part in events which may involve the consumption of alcohol.

Social Host Ordinances were created on these basic premises:

- Municipalities have the authority to enact laws that promote public health, safety, and general welfare.
- The occurrence of underage drinking parties on private property is harmful to the underage persons, and is a threat to public safety and the general welfare of the community.
- Persons responsible for the occurrence of parties, or in possession/control of the property, have a duty to ensure that alcoholic beverages are not served to, or consumed by, underage persons.
- Police authority at such gatherings is necessary when such activities are determined to be a threat to the peace, health, safety, or general welfare of the public.
- Police Officers are often required to make multiple responses to the location of a gathering where alcoholic beverages are consumed by minors in order to disperse uncooperative participants – causing a drain on public safety resources, and in some cases, leaving other areas of the City with delayed police response.
- Problems associated with such gatherings are difficult to prevent and deter unless law enforcement officers have the legal authority to do so.
- Penalties against the responsible party will serve as an effective strategy for deterring underage drinking parties – thereby reducing alcohol consumption and abuse by minors, physical altercations and injuries, neighborhood vandalism, and excessive noise disturbance, and thus improving public safety.

#### Different Types of Social Host Ordinances

Two main types of Social Host Ordinances have been enacted in Southern California cities – one which penalizes violators civilly, and one which criminalizes the violation as a misdemeanor.

***Criminal Liability Ordinances*** – About two-thirds of the cities in San Diego County have established criminal liability ordinances.

San Diego was the first city to implement a social host ordinance to help reduce underage drinking. However, in October 2004, the San Diego's ordinance was deemed unconstitutional by a panel of Superior Court judges. Their ruling was on the grounds that the ordinance was "constitutionally impermissible" because of "the lack of *mens rea*", or criminal intent, and because it violated a person's right to due process. Under San Diego's ordinance, a person could be convicted even if they were unaware, or would not reasonably know, (1) that a party was taking place, or (2) that minors were present and consuming alcohol.

The City of San Diego has recently implemented a revised ordinance, approved by City Council in April 2006. The amendments (1) impose a duty on social hosts to take all reasonable steps to ensure that a minor is not consuming alcoholic beverages, and (2) add the requisite *mens rea*, or *knowledge* element. Further, the ordinance now clarifies the remedies available to the City of San Diego, including criminal prosecution, civil enforcement, and recovery of response costs.

Many San Diego County cities that patterned their ordinance after San Diego's ordinance have suspended enforcement of their social host ordinances until they too can revisit and amend their ordinances. In the interim, ordinances in those cities remain on the books as a deterrent.

The Los Angeles County District Attorney's Office was contacted regarding a criminal social host ordinance. Their office felt that due to the number of issues being raised about the legality of the ordinance being attacked in San Diego, their office would recommend against the implementation of a similar ordinance.

**Civil Liability Ordinances** – Ventura County cities have also established Social Host ordinances - shifting penalties from criminal to civil, and charging administrative fines of \$1,000 or more for similar offenses.

The City of Ojai was the first city in Ventura County to adopt a social host ordinance. The City of Ojai determined that a town of their size (population 8,000) could not afford a court challenge like the City of San Diego and created an ordinance that focused on civil liability instead and has been successful.

Other municipalities in Ventura County were also interested in pursuing a civil social host ordinance. The County of Ventura's legal counsel noted that they were in favor of a civil citation because it is less likely to be contested, but is still effective in deterring adults from allowing underage drinking parties. Counsel also felt that the adoption of a civil liability ordinance would be easier to defend as the burden of proof is higher in criminal cases. Additionally, agencies in Ventura County have found it difficult to prosecute local law infractions in a regional court setting; the civil liability ordinance has allowed them to bypass the court system for the most part. As Manhattan Beach files most criminal cases with the Los Angeles County District Attorney's office in the county courthouse in Torrance, we are similar to the agencies in Ventura County.

The civil social host ordinance allows officers to proactively look at underage drinking at private parties and allow officers to cite irresponsible "hosts" before a party becomes unruly. This ordinance also gives the police an additional tool to remind any "host" the ramifications of underage drinking occurring at their party. Currently, officers can only address parties that are unruly or violate the city's noise ordinance.

A "host" is defined, but is not limited to, as the person or persons in control of the residence or other private property and can include owners and/or lessee, the host themselves, a parent or legal guardian, a minor who is also the "host", or a tenant. A landlord could also be considered a "host" provided that the landlord has received notice of prior unruly parties at their property involving underage drinking.

Thus far, more than fifteen civil citations have been issued and paid in Ventura County for a 100% success rate in the County. The cities of Ojai, Thousand Oaks, Camarillo and County of Ventura have each successfully cited several "hosts" for violating their social host ordinance and fines have been paid. The cities of Simi Valley, Fillmore, Moorpark and Santa Paula have also implemented civil Social Host Ordinances, but have not yet officially cited any persons yet. Law enforcement agencies from all of the cities have found the civil ordinance to be a useful tool.

#### **Fines and Penalties of Social Host Ordinances**

Both criminal and civil ordinances present fines/penalties in two parts.

Part 1: A single-occasion house party where underage drinking is occurring is subject to a citation and fine (and possible imprisonment under the criminal liability law).

Part 2: If the police have to return to a home party location within one year of the first occurrence, the host would receive a citation and fine, and make restitution for the costs associated with responding to the unruly gathering, including costs incurred by law enforcement, fire, and/or other emergency response providers.

The majority of cities with civil social host ordinances adopted fines of approximately \$1,000 for each offense (plus response costs). The City of Thousand Oaks, which also adopted a civil ordinance, set their fine standard well above other cities in the County – raising fines to \$2,500 for the first offense, \$3,500 for the second and \$5,000 for the third and subsequent offenses (plus response costs). These were fines that the City Council of Thousand Oaks felt were more appropriate to sufficiently deter “hosts” and to convey the severity of the offense. Community service may be substituted in cases where the financial burden is too great or where the “host” is a juvenile.

#### **Potential Successes of the Social Host Ordinance**

Social Host Ordinances (both criminal and civil) succeed by:

- Providing an effective deterrent for adults and minors that host unruly parties where underage drinking is occurring.
- Increase the awareness of minors at parties where alcohol is being served and gives incentives for “hosts” to be vigilant for underage consumption of alcohol.
- Encouraging parents to take reasonable steps to prevent such parties while away.
- Holding juveniles partially accountable for underage drinking parties planned without the knowledge of their parents.
- Recovering costs of responding to the same party site repeatedly.
- Officially establishing the City’s zero-tolerance policy for underage drinking.

#### **Potential Difficulties of a Social Host Ordinance**

Cities are not allowed to establish municipal code which overlaps state law (preemption), and the California Constitution grants to the state the sole right to regulate *possession* of alcohol. The City does have the authority to regulate *consumption* of alcohol.

Some cities which established criminal liability ordinances mentioned that, although the ordinance provided necessary probable cause for arrest, it was not useful for prosecution and sentencing. Prosecution is very labor intensive, and cases can be overturned easily (even with recent amendments to ordinances) because of preemption and the lack of *mens rea*.



A social host ordinance is relatively new (Spring, 2006) and legal challenges are still possible. If adopted, Manhattan Beach would be the first city in Los Angeles County to adopt a social host ordinance.

**CONCLUSION**

The police department feels that a social host ordinance will be another tool to assist them in the handling of unruly parties in addition to current laws that are available to deal with such disturbances. Currently, parties are only addressed by the police when they become loud and unruly. With a social host ordinance, a party would be considered unruly should the police find underage drinking occurring and cite the host of such party immediately. This will likely prevent a number of parties from escalating to a neighborhood disturbance. There will also be a clear message sent throughout the community that underage drinking under the guise of a private party will not be tolerated and that "hosts" of such parties will be held accountable for such activity occurring on their property.

As the legality of a criminal social host ordinance is still under debate, the police department feels that a civil ordinance may have the potential of the highest degree of success in this city.

Therefore, Staff asks that the City Council provide direction regarding the possible drafting of a Social Host Ordinance by considering one of the following options:

- 1) Direct the City Attorney to draft an ordinance.
- 2) Choose not to pursue a social ordinance at this time.
- 3) Delay a decision on this matter for one year to determine if there are more legal challenges to such an ordinance.

ORDINANCE NO. 2098

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, ADDING A NEW CHAPTER 4.128 TO TITLE 4 OF THE MANHATTAN BEACH MUNICIPAL CODE IMPOSING FINES, COSTS AND OTHER CONSEQUENCES FOR HOSTING GATHERINGS OF UNDERAGE DRINKERS

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

**SECTION 1.** The City Council hereby makes the following findings:

- A. Under age drinking is a significant problem in the United States endangering the youth who are drinking as well as those around them;
- B. It is incumbent on parents to impose adequate safeguards to ensure that at social gatherings alcohol is not made available to minors;
- C. It is in the interest of the public health, safety and welfare to adopt an ordinance which will penalize those who fail to ensure that alcohol is not made available to minors at parties and other social gatherings.

**SECTION 2.** The City Council of the City of Manhattan Beach hereby adds a new Chapter 4.128 of Title 4 the Manhattan Beach Municipal Code as follows:

**Chapter 4.128 Social Host Liability**

**4.128.010 Definitions**

For purposes of this Ordinance, 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;
  - 3) the cost of repairing any City 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; and
  - 4) any other costs recoverable in compliance with California Civil Code section 1714.9.
- (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 a residence or other private property conducted in which alcoholic beverages are being consumed or possessed by any under-aged person and upon which conduct which is substantially disturbing to the quiet enjoyment of neighboring properties. Illustrative of such conduct is excessive noise, excessive traffic, obstruction of public streets by crowds or vehicles, public drunkenness or unlawful public consumption of alcohol or alcoholic beverages, assaults, batteries, fights, domestic violence or other disturbances of peace, vandalism, litter, and any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare.
- (g) "Responsible person" means a person or persons with a right of possession of the residence or other private property at which a loud or unruly gathering is conducted, including, but not limited to:
  - 1) any owner of the residence or other private property, meaning the record owner of the title to the property as of the time of the loud or unruly gathering, regardless of where that person or entity may currently actually reside;
  - 2) a tenant or lessee of the residence or other private property;
  - 3) the landlord of another person responsible for the gathering, provided that the landlord has received notice of a prior loud or unruly gathering at the same residence or other private property;
  - 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. A 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 civil money penalties or responses costs. Prior knowledge of the loud or unruly gathering is not pre-requisite to a finding that any specific individual is a responsible person as defined by this section.
- (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.

**4.128.020 Responsibility for Proper Property Management**

Every Responsible Person including but not limited to every owner, occupant, lessee or holder of any possessory interest of a residence or other private property within the City of Manhattan Beach 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 Chapter. The owner of the property remains liable for such violations regardless of any contract or agreement with any third party regarding the property.

**4.128.030 Penalties for Violation of Ordinance**

It is a civil violation of this Ordinance, and a public nuisance constituting an immediate threat to public health and safety warranting summary abatement, for any responsible person to conduct or allow a loud or unruly gathering at a residence or other private property at which service to, or consumption of alcohol or alcoholic beverages by, underage persons occurs. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation, the time for requesting that hearing and the warning relating to the recovery of response costs for subsequent citations under this Ordinance as described under Section 4.128.040.

In the event that a loud or unruly gathering at a residence or other private property at which service to, or consumption of alcohol or alcoholic beverages by, underage persons occurs is hosted by a juvenile, then the parents or guardians of that juvenile will be jointly and severally liable with said juvenile or juveniles for any penalties and response costs incurred pursuant to this Chapter.

The penalty for a citation issued for violation of this Chapter shall be an administrative fine of one thousand dollars (\$1000) per responsible person per incident not including response costs pursuant to Manhattan Beach Municipal Code Chapter 3.64 for the first incident within any consecutive twelve (12) month period. For a second such incident within a consecutive twelve (12) month period the fine shall be two thousand dollars (\$2,000) and for a third such incident within any consecutive twelve (12) month period the fine shall be five thousand dollars (\$5,000).

#### **4.128.040 Recovery of Response Costs**

When a 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 Manhattan Beach at which service to, or consumption of alcohol or alcoholic beverages by, underage persons occurs, all responsible persons shall be jointly and severally liable, in addition to any fines assessed pursuant to section 4.128.030 above, for the City's costs of responding to that loud or unruly gathering and all subsequent loud or unruly gatherings at the residence or other private property at which service to, or consumption of alcohol or alcoholic beverages by, underage persons occurs. Such costs are deemed to be costs incurred in the physical abatement of the public nuisance.

#### **4.128.050 Imposition of Fines and Response Costs**

When a law enforcement, fire, or other emergency response provider makes an initial response to a loud or unruly gathering at a residence or other private property within the City of Manhattan Beach, the official shall, in writing notify any responsible person(s) for the gathering at the scene that:

- (a) The official has determined that a loud or unruly gathering exists at which alcohol has been made available to an underage person or persons;
- (b) Responsible person(s) will be fined for violation of this ordinance and billed for response costs;
- (c) Responsible person(s) are entitled to request a hearing to appeal the fine and response costs.

This notice shall be given to all identified responsible persons at the time of the first response to a loud or unruly gathering at a residence or other private property at which service to, or consumption of alcohol or alcoholic beverages by, underage persons occurs within the City before assessing a fine pursuant to this section for the incident.

Within 30 calendar days of the response a written statement of assessment of costs and fines, with the information specified in section 4.128.060 below, shall be transmitted via certified mail to the record owner of the private property as shown in the records of the Los Angeles County Clerk and Recorder's Office. Payment shall be immediately due and payable upon the date of mailing of this statement.

This section applies to fines and for costs of abatement of the summary nuisance described in Section 4.128.030 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 costs, including reasonable attorney fees and court costs.

#### **4.128.060 Billing and Collection of Fines**

The amount of response costs and any administrative fine imposed pursuant to section 4.128.030 shall be deemed a debt owed to the City by the responsible person held liable in Section 4.128.040 and, if a juvenile, by the juvenile's parents or guardians. Any person owing such costs shall be liable in an administrative civil action brought in the name of the City for recovery for such costs, including reasonable attorney fees and court costs.

As provided in section 4.128.050 above the Chief of Police shall mail notice of the costs for which the responsible person is liable, on behalf of all response providers, via certified mail within 30 calendar days of the response giving rise to such costs. The Chief of Police shall calculate and compile an itemized list of the applicable response costs. The notice shall contain the following information:

- (a) the name(s) 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 agencies who responded;
- (e) an itemized list of the response costs for which the person(s) is being held liable; and
- (f) information regarding the date payment is due;
- (g) the right to request an administrative hearing to challenge the imposition of response costs and administrative fines if any;
- (h) notification of the imposition of a lien on the subject property pursuant to Government Code sections 38773 et seq. in the event of non-payment of response costs and fines; and

The responsible person must remit payment of the noticed response costs to the City of Manhattan Beach within 45 calendar days of the notice thereof. The payment of any such costs shall be stayed upon a timely request for an administrative hearing made pursuant to Section 4.128.080.

If a timely request for an administrative hearing pursuant to Section 4.128.080 is not made, such costs or fines, if unpaid within 45 days, shall become a lien against the property with the priority of a judgment lien.

If, following an administrative hearing, appeal, or other final determination, the owner of the property is determined to be responsible for any costs or fines pursuant to this section, such costs or fines, if unpaid within 45 days of notice of the final determination, shall become a lien against the property with the priority of a judgment lien.

In either case, a notice of lien shall be filed with the County Clerk and Recorder's Office which states the identity of the record owner or possessor of the property, the date upon which the citation was issued, a description of the real property subject to the lien, and the amount of the abatement costs incurred to date. It is the intent of the Manhattan Beach City Council that abatement costs incurred after the filing of the notice of abatement lien relate back to the date upon which the lien was recorded for purposes of priority; however, in order to preserve its rights, after all abatement costs have been incurred and the abatement is complete, the City Finance Director shall cause a supplemental notice of abatement lien to be recorded. The supplemental notice shall contain all of the information required for the original notice and shall also refer to the recordation date and recorder's document number of the original notice.

#### **4.128.070 Cumulative Remedies**

Nothing in this Ordinance shall be construed as a waiver by the City of Manhattan Beach of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures.

#### **4.128.080 Administrative Hearing on Challenged Citations and/or Response Costs Recovery Assessments**

Any person subject to a civil money penalty pursuant to Section 4.128.030 and/or response costs recovery fees pursuant to Section 4.128.040 shall have the right to request an administrative hearing before an impartial Hearing Officer within 30 calendar days of the issuance of a citation and/or notice of the imposition of fines and/or response costs under this Ordinance. To request such a hearing, the person requesting the hearing shall notify the Manhattan Beach City Clerk's Office in writing by the close of business of the thirtieth calendar day from the date of issuance of the citation or notice.

The Manhattan Beach City Manager shall assign a neutral Hearing Officer to conduct such administrative hearings as may be required. The City may contract for the services of neutral Hearing Officers as appropriate and the Hearing Officers may be compensated for their services.

The costs of the administrative hearing shall be assessed to the responsible person in addition to any other fines and penalties in the event that the citation or imposition of costs is upheld.

#### **4.128.090 Civil Appeal After Hearing**

Any person upon whom is imposed a penalty pursuant to Section 4.128.030 and/or response costs recovery fees pursuant to Sections 4.128.040 shall have the right to appeal in the Superior Court the imposition of such penalty or fees within 20 calendar days after service of the final decision issued by the administrative hearing officer pursuant to Government Code section 53069.4, subdivision (b), and applying the procedures detailed therein, if, and only if, that person first properly requests and obtains a hearing under Section 4.128.080 above.

#### **4.128.100 Enforcement Authority**

A loud or unruly gathering at a residence or other private property at which service to or consumption of alcohol or alcoholic beverages by underage persons occurs constitutes a public nuisance and an immediate threat to public health and safety and shall be summarily abated by the Police Department by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and citation under this Ordinance as well as citation and/or arrest of any law violators under any other applicable ordinances and state statutes.

The City Attorney and the Chief of Police, all sworn officers of the City and the City Manager are authorized to administer and enforce the provisions of this chapter. The City Attorney and the Police may exercise any enforcement powers provided by law in executing this Ordinance.

**SECTION 3.** If any sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining provisions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each sentence, clause or phrase thereof irrespective of the fact that any one or more sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

**SECTION 4.** Any provisions of the Manhattan Beach Municipal Code, or appendices thereto, or any other Ordinance of the City, to the extent that they are inconsistent with this Ordinance, and no further, are hereby repealed.

**SECTION 5.** This Ordinance shall go into effect and be in full force and operation from and after thirty days after its final passage and adoption.

**SECTION 6.** The City Clerk shall cause this Ordinance or a summary thereof to be published and, if appropriate, posted, as provided by law. Any summary shall be published and a certified copy of the full text of this Ordinance posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall cause a summary to be published with the names of those City Council members voting for and against this Ordinance and shall post in the Office of the City Clerk a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against the Ordinance.

PASSED, APPROVED and ADOPTED this 20<sup>th</sup> day of February, 2007.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Mayor, City of Manhattan Beach, California

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By   
\_\_\_\_\_  
City Attorney