



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.

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.