

Before the Board of Supervisors County of Placer, State of California

In the matter of: An ordinance amending
Placer County Code Chapter 9, Public Peace,
Safety and Welfare by adding Article 9.10
Social Host Liability

Ordinance No.: 5907-B

Introduced: March 20, 2018

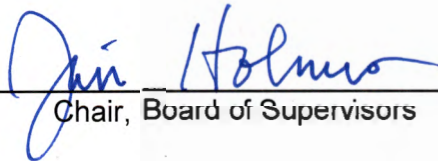
The following Ordinance was duly passed by the Board of Supervisors of the County of Placer
at a regular meeting held April 10, 2018, by the following vote on roll call:

Ayes: DURAN, WEYGANDT, UHLER, MONTGOMERY, HOLMES

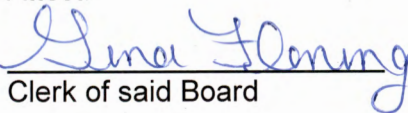
Noes: NONE

Absent: NONE

Signed and approved by me after its passage.


Chair, Board of Supervisors

Attest:


Clerk of said Board

THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER, STATE OF CALIFORNIA HEREBY
FINDS AND DECLARIES THE FOLLOWING:

1. Instances of large parties and disturbances both at rental facilities and private homes often disturb the public peace, safety, and welfare of members of the community. These incidents can also jeopardize the welfare and safety of those in attendance due to assaultive and/or destructive behavior.
2. The purpose of this chapter is to protect the public health, safety, and general welfare of people and premises in the county, including the quiet enjoyment of property, by enhancing the ability of law enforcement to deter the consumption of alcohol, marijuana, or other controlled substances by minors and to hold adult hosts accountable for ensuring minors are not consuming alcoholic beverages, marijuana, or other controlled substances.

NOW THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF PLACER ORDAINS AS FOLLOWS:

Section 1 Chapter 9, Public Peace, Safety and Welfare, new Article 9.10 Social Host Liability, is hereby added as set forth below.

Section 2. This ordinance shall take effect and be in full force thirty (30) days after the date of its passage. The Clerk is directed to publish this ordinance, or a summary thereof, within fifteen (15) days in accordance with Government Code Section 25124.

Article 9.10 SOCIAL HOST LIABILITY

9.10.010 Title.

This article shall be known as the "Social Host Liability" Ordinance.

9.10.020 Definitions.

The terms used in this article shall have the following meanings:

"Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

"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.

"Controlled substance" means a drug or substance whose possession and use are regulated under the California Controlled Substances Act (Health and Safety Code Section 11000 et seq.). Such term does not include any drug or substance for which the individual found to have consumed or possessed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription.

"Gathering" means any party, event or other meeting where a group of three or more persons have assembled or are assembling for a social occasion or social activity.

"Guardian" or "Legal guardian" means either a person who, by court order, is the guardian of the minor; or a public or private agency with whom a minor has been placed by the court.

"Juvenile(s)" means any person under eighteen (18) years of age.

"Marijuana" shall interchangeably be used to mean "Cannabis" as they are defined in Placer County Code Section 8.10.030.

"Minor" or is any person under the age of twenty-one (21) years.

"Parent" means a person who is a natural parent, adoptive parent, foster parent, step-parent of the minor or who acts in loco parentis for a minor.

"Private property" means any property, place or premises, 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, including but not limited to a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room.

"Response costs" mean the costs associated with response by law enforcement or other emergency response providers to a gathering, including, but not limited to:

1. Salaries and benefits of law enforcement, or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with a gathering, including, but not limited to, the administrative cost associated with or attributed to such response;
2. The cost of any medical treatment for any law enforcement or other emergency response personnel injured responding to, remaining at, or leaving the scene of a gathering;
3. The cost of using any county equipment in responding to, remaining at, or leaving the scene of a gathering;
4. The cost of repairing any county equipment or property damaged during the course of any responding to, remaining at, or otherwise dealing with a gathering;
5. Any other costs related to enforcement of this chapter.

"Responsible person(s)" means a person or persons with a right of possession in the private property including, but not limited to:

1. An owner of the private property;
2. A tenant or lessee of the private property;
3. The person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering or, if such person is a minor, then the parent or guardian of such minor.

"Social host" means any person having ownership or control of a premises, or is responsible for organizing a gathering, who knowingly permits or allows, tacitly or otherwise, a gathering or unruly gathering, as those terms are defined in this chapter, to occur on private property.

"Unruly gathering" means a gathering conducted in such a manner as to constitute a substantial disturbance of the quiet enjoyment of private property.

9.10.030 Hosting, permitting, allowing a gathering where minors consume alcoholic beverages, marijuana, or other controlled substances prohibited.

A. Except as permitted by law, it is unlawful for any person having ownership or control of any premises, or who is responsible for a gathering or unruly gathering, to host, knowingly permit, or allow, tacitly or otherwise, a gathering to take place at said premises, where at least one minor possesses or consumes an alcoholic beverage, marijuana, or other controlled substance.

B. Except as provided in subsection G, whenever a person having ownership or control of a premises is on the premises and allows a minor to possess or consume any alcoholic beverage, marijuana, or controlled substance thereon, it shall be prima facie evidence that such person had the requisite knowledge specified in subsection A.

C. A social host shall be deemed to have constructive knowledge that a minor has consumed or possessed alcoholic beverages, marijuana, or controlled substances if the social host did not take reasonable steps to prevent the consumption or possession of alcoholic beverages, marijuana, and controlled substances by the minor.

D. A social host shall not be in violation of this chapter if he or she seeks immediate assistance from any law enforcement agency to remove any person who refuses to abide by the social host's performance of the duties imposed by this chapter, or to terminate the gathering because the social host has been unable to prevent minors from consuming or possessing alcoholic beverages, marijuana, or other controlled substances despite having taken reasonable steps to do so. A social host shall not be in violation of this chapter if he or she seeks medical assistance to provide care for a person in immediate danger due to the accidental or intentional overdose of alcohol, marijuana, or a controlled substance.

E. When law enforcement or other emergency response providers respond to a gathering at which a minor has consumed or is consuming alcoholic beverages, marijuana, or a controlled substance, all social hosts shall be jointly and severally liable.

F. This section shall not apply to any location or place regulated by the California Department of Alcoholic Beverage Control.

G. This section shall not apply to: (1) a parent or legal guardian who provides an alcoholic beverage at a family gathering to a minor under the parent or legal guardian's immediate care; (2) a parent or legal guardian who provides marijuana to a minor who is legally qualified to use marijuana, as required by the California Department of Public Health's "Medical Marijuana Program," as amended from time to time; or (3) to any person who provides an alcoholic beverage to a minor as part of a legally protected religious activity.

9.10.040 Dispersal of gathering.

Any law enforcement officer or other emergency response provider who determines that a violation of Section 9.10.030 has occurred, shall have the authority to direct the responsible person(s) to immediately disperse the gathering, or if the officer is unable to identify immediately the responsible person(s), to command all those attending the gathering to disperse immediately.

9.10.050 Juvenile social hosts.

If the social host is a juvenile, the parents or legal guardians of the juvenile shall be responsible for any penalty imposed pursuant to this chapter.

9.10.060 Separate violation for each incident.

Each incident in violation of Section 9.10.030 shall constitute a separate offense. An incident shall be defined to mean the collective response to a single occurrence or call for service.

9.10.070 Violation.

A. Notwithstanding any other provision of this code to the contrary, violation of the provisions of this section shall constitute in the discretion of the district attorney an infraction or misdemeanor punishable pursuant to the provisions of Government Code Section 25132.

B. All remedies set forth in this article are cumulative and the use of one or more remedies shall not bar the use of any other remedy for the purpose of enforcing the provisions of this article.

9.10.080 Enforcement authority.

The sheriff and district attorney are authorized to administer and enforce this article.

9.10.090 Response costs.

A. A responsible person(s) shall be liable for response costs incurred when law enforcement or other emergency response providers respond to a gathering on private property where at least one minor has consumed or is consuming alcoholic beverages. The amount of response costs shall be deemed a debt owed to the county by the responsible person(s). Any person owing such costs shall be liable in a civil action brought in the name of the county for such fees, including reasonable attorney fees.

B. Notice of the response costs for which the responsible person(s) is liable shall be mailed via first-class mail. The notice shall contain the following information: the name of the person(s) being held liable for the payment of the response costs; the address of the private property where the gathering occurred; the date and time of the response; the law enforcement or emergency service provider(s) who responded; an itemized list of the response costs for which the person(s) is being held liable; and the appeal procedures.

C. Payment shall be remitted to the county of Placer within thirty (30) calendar days from the date such notice was mailed. The payment of any such costs shall be stayed upon the filing of a timely appeal.

D. The appeal procedures established relating to administrative civil penalties imposed for a violation of this article shall be applicable to the imposition of response costs.

9.10.100 Administrative monetary penalties.

As an alternative to punishment as an infraction, the sheriff may assess an administrative monetary penalty pursuant to California Government Code Section 53069.4. Administrative penalties shall be assessed in accordance with the procedures set forth in this section. Unless otherwise stated, administrative monetary penalties shall be the maximum amounts specified in Government Code Section 25132.

A. Notice of violation. When a violation of any of the provisions of this article is identified, the sheriff shall issue a notice of violation to the responsible person(s). The notice shall contain the following information: (1) date, approximate time, and address or definite description of the location where the violation(s) occurred; (2) the code section violated and a description of the violation; (3) the amount of the monetary penalty for the violation(s); (4) an explanation of how the penalty shall be paid, the time period by which it shall be paid, and the place to which the penalty shall be paid; (5) identification of rights of appeal, including the time within which the notice may be contested and the place to obtain a notice of appeal and request for hearing form to contest the notice of violation; and (6) the name and signature of the citing officer and, if possible, the signature of the responsible person(s). A single notice of violation may charge a violation for the violation of one or more code sections.

B. Service of notice of violation. The sheriff shall impart notice to the responsible person(s) of the violation in the following manner:

1. Personal service. The sheriff shall attempt to locate and personally serve the responsible person(s) and, if possible, obtain the signature of the responsible person(s) on the notice of violation. If the responsible person served refuses or fails to sign the notice, the failure or refusal to sign shall not affect the validity of the notice or of subsequent proceedings.

2. Mail. If, for any reason, the sheriff is unable to personally serve the notice of violation on the responsible person(s), the notice shall be mailed to the responsible person(s) by certified mail, postage prepaid with a requested return receipt. Concurrently, the citation shall be sent by regular mail. Service by mail shall be sent to the responsible person(s)'s address as shown on public records or as known by the county. If the notice is sent by certified mail and returned unsigned, then service shall be deemed effective by regular mail, provided the notice sent by regular mail is not returned by the post office. Service by mail shall be effective on the date of mailing.

3. The failure of any responsible person(s) to receive any notice served in accordance with this section will not affect the validity of any proceedings taken under this chapter.

C. Satisfaction of notice of violation.

1. Upon receipt of a notice of violation, the responsible person(s) must pay the administrative penalty to the county.

2. If a responsible person fails to pay the administrative penalty, the responsible person(s) shall pay the accrued penalty amount to the county.

D. Appeal.

1. Any recipient of a notice of violation may contest that there was a violation of this article, or that he or she is the responsible person(s) by completing a notice of appeal and request for hearing form and filing it with the sheriff within fifteen (15) calendar days from the date of issuance of the notice,

together with an advance deposit of the total amount of the monetary penalty. Any appeal of the notice of violation must include a detailed written explanation of the grounds for appeal.

2. Any penalty amount that has been deposited in advance shall be refunded if it is determined, after a hearing, that the person charged in the notice of violation was not responsible for the violation(s) or that there was no violation(s) as charged in the notice of violation.

3. The failure to submit a timely and complete request for hearing will terminate a person's right to contest the notice of violation and result in a failure to exhaust administrative remedies, and the order of the notice of violation will serve as a formal determination and conclusive evidence of the named responsible person(s)'s liability.

E. Hearing officer. A county hearing officer, selected by the sheriff shall conduct the administrative hearing.

F. Hearing procedure. The following rules shall apply to the conduct of a hearing under this section:

1. No hearing to contest an administrative penalty before a hearing officer shall be held unless and until a notice of appeal and request for hearing form has been completed and timely filed, and the total amount of the penalty has been timely deposited in advance with the sheriff.

2. The hearing before the hearing officer shall be set for a date that is not less than fifteen (15) and not more than sixty (60) calendar days from the date that the notice of appeal is filed in accordance with the provisions of this section. The person requesting the appeal shall be notified of the time and place set for the hearing at least ten (10) calendar days prior to the date of the hearing.

3. The hearing officer shall only consider evidence relevant to whether the violation(s) occurred and whether the person filing the appeal is the responsible person.

4. The person contesting the administrative penalty shall be given the opportunity to testify and present witnesses and evidence concerning the alleged violation.

5. The failure of any recipient of a notice of violation to appear at the hearing or, in the alternative, to present written or demonstrative evidence shall constitute an admission of the violation by the recipient and an admission that the amount of the administrative penalty is appropriate as well as a failure to exhaust administrative remedies that may bar judicial review.

6. The notice of violation and any additional documents submitted by the sheriff shall constitute prima facie evidence of the respective facts contained in those documents.

7. If the sheriff submits an additional written report concerning the alleged violation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served by first class mail on the person requesting the hearing at least five days prior to the date of the hearing.

8. At least ten (10) days prior to the date of the hearing, the recipient of a notice of violation shall be provided with copies of the notices, reports and other documents submitted or relied upon by the sheriff. No other discovery is permitted. Formal rules of evidence shall not apply.

9. The hearing officer may continue the hearing and request additional information from the sheriff or the recipient of the notice of violation prior to issuing a written decision.

10. The hearing officer is not required to provide transcripts of hearings, but is required to make available tapes of hearings for a fee.

G. Hearing officer's decision.

1. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision within ten (10) days of the date of the hearing to uphold or cancel the notice of violation and shall list in the decision the reasons for that decision. The decision of the hearing officer shall be final.

2. If the hearing officer determines that the notice of violation should be upheld, then the sheriff shall retain the penalty amount, including any fee that is the subject of the notice of violation, on deposit with the sheriff.

3. If the hearing officer determines there has been no violation and the penalty was deposited with the sheriff, then the county shall promptly refund the amount of the deposited penalty.

4. The recipient of the notice of violation shall be served with a copy of the hearing officer's written decision.

H. Right to judicial review. Any person aggrieved by the administrative decision of the hearing officer may obtain review of the administrative decision by filing a petition for review with the Placer County Superior Court in accordance with the timelines and provisions as set forth in California Government Code Section 53069.4.

9.10.110 Failure to pay response costs and/or administrative penalties.

A. The failure of any person to timely pay either the response costs or the assessed administrative penalties constitutes a debt to the county and may result in the matter being referred to the Placer County department of administrative services, which may file a claim with the small claims court or, in the alternative, utilize any means within its power to collect the amount owed. The county may pursue any other legal remedy to collect the administrative fines.

B. Any person who fails to pay to the county any response costs or administrative penalty imposed pursuant to this article on or before the date such costs or penalty are due shall also be liable in any action brought by the county for all costs incurred in securing payment of the delinquent amount, including, but not limited to, administrative costs and attorneys' fees. Such collection costs are in addition to any required fees, penalties, interest and late charges.

C. Notwithstanding all of the procedures set forth in this section, the sheriff shall have the ability and discretion to enforce violations of this article, to impose necessary conditions, to forgive portions of a debt or penalty owed to the county under this article, and to coordinate collection and enforcement efforts.

9.10.120 No duty to enforce.

Nothing in this article shall be construed as imposing on the sheriff or the county of Placer any duty to issue any violations of this article and neither the sheriff, district attorney, nor the county, shall be held liable for failure to issue a citation for violation of this article.

9.10.130 Severability.

The provisions of this article are declared to be separate and severable. The invalidity of any clause, phrase, sentence, paragraph, subdivision, section or portion of this article, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this article, or the validity of its application to other persons or circumstances.