

Item # 9

**City of Carson City  
Board Action Request Form**

**Date Submitted:** 10/30/2006

**Agenda Date Requested:** 11/16/06

**Time Requested:** 15 minutes

**To:** Mayor and Supervisors

**From:** Noel S. Waters, District Attorney

**Subject Title:** An Ordinance amending Title 8 (Public Peace, Safety and Morals) by adding a new Chapter 8.10, Social Host Liability Ordinance, to the Carson City Municipal Code, and other matters properly relating thereto.

**Staff Summary:** This ordinance is designed to effectively deter loud, unruly parties and gatherings on private premises. It is modeled upon a number of similar ordinances enacted around the United States which hold non-commercial individuals responsible for underage drinking, illegal drug activities or other dangerous and disruptive events occurring on property which they own, lease or otherwise control. Social host liability ordinances target the venues or locations where such nuisance activities take place, rather than directly target the wrong-doers (existing laws against furnishing alcohol to minors, minors consuming alcohol, possession or distribution of illegal drugs are already available direct-action tools).

This ordinance imposes civil liability, based upon public nuisance legal theory, upon social hosts and persons responsible for the private premises where loud or unruly gatherings take place. Responsible persons who conduct, aid, allow, permit or condone such gatherings are maintaining a public nuisance and subject to escalating civil fines over a 12-month period. First violations are \$250, second violations in 12-months on the same premises or by the same responsible person is \$500; three or more such violations is a \$1,000 civil fine. In addition, the ordinance provides extensive notice provisions to landlords, owners, lessees and tenants when a violation is found to have occurred, including posting or "red-tagging" the premises.

A key provision is the recovery of "response costs:" the costs incurred by police, fire or other emergency response providers, when such public officials are required to respond to a second or subsequent loud or unruly gathering within 12 months of a warning/posting being given to persons responsible for the premises. These response costs are defined to include emergency responder salaries and benefits, administrative costs, any medical treatment expenses, and/or damage to repair City equipment or property. All responsible persons, whether or not they reside on the premises, are jointly and severally liable for response costs. The ordinance further provides various appeal procedures akin to those available for other public nuisance abatement actions, and exempts constitutionally protected activities.

**Type of Action Requested:** (check one)

☐ Resolution

☒ Ordinance (First Reading)

☐ Formal Action/Motion

☐ Other (Specify)

Does This Action Require a Business Impact Statement: ( ) Yes (XX) No

*I move to introduce on first reading*  
Recommended Board Action: *Bill Number*\_\_\_\_, *an ordinance*, amending Title 8 (Public Peace, Safety and Morals) by adding a new Chapter 8.10, Social Host Liability Ordinance, to the Carson City Municipal Code, and other matters properly relating thereto.

Explanation for Recommended Board Action:

Applicable Statute, Code, Policy, Rule or Regulation: Title 8, Carson City Municipal Code (Public Peace, Safety and Morals).

Fiscal Impact: None

Explanation of Impact: N/A

Funding Source: N/A

Alternatives: Disapprove motion to approve Ordinance; direct modifications for re-consideration.

Supporting Material: Commentary memo on specific sections of Ordinance (comments\_on\_social\_host\_ordinance.rtf)

Prepared By: Noel S. Waters, District Attorney

Reviewed By:

*Noel S. Waters, DA*  
*[Signature]*  
*Will Albrecht*

Date: \_\_\_\_\_  
Date: *11/6/2006*  
Date: *11/7/2006*  
Date: *11/7/2006*

Board Action Taken:

Motion: \_\_\_\_\_ 1) \_\_\_\_\_ Aye/Nay  
2) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_

AN ORDINANCE ADDING A NEW CHAPTER 8.10, SOCIAL HOST LIABILITY ORDINANCE TO THE CARSON CITY MUNICIPAL CODE, AND OTHER MATTERS PROPERLY RELATED THERETO.

Fiscal Effect: \_\_\_\_\_

THE CARSON CITY BOARD OF SUPERVISORS DO HEREBY ORDAIN:

Section I. That Chapter 8.10, Social Host Liability Ordinance, is hereby added to the Carson City Municipal Code as follows:

Sections:

Section 1. Short Title.

Section 2. Legislative Findings.

Section 3. Purposes.

Section 4. Definitions.

Section 5. Responsibility for Proper Property Management.

Section 6. Penalties for Violation of Ordinance.

Section 7. Notice of Loud or Unruly Gathering; Posting; Removal of Notice Prohibited; Right to Contest Posting; Written Warning to Responsible Person.

Section 8. Recovery of Response Costs.

Section 9. Billing and Collection.

Section 10. Reservation of Legal Options.

Section 11. Appeals.

Section 12. Severability.

Section 13. Protected Activities.

Section 14. Effective Date.

Section 1. Short Title.

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

Section 2. Legislative Findings.

The Carson City Board of Supervisors finds as follows:

(a) The Consolidated Municipality of Carson City, pursuant to the police powers delegated to it by the Nevada Legislature, has the authority to enact laws which

promote the public health, safety and general welfare of its residents, and, pursuant to NRS 202.020 is authorized to enact by ordinance additional or broader restriction on underage drinking that are presently enacted by state law;

(b) The occurrence of loud or unruly gatherings on private property where alcoholic beverages are served to or consumed by underage persons is harmful to the underage persons themselves and a threat to public health, safety, quiet enjoyment of residential property and general welfare;

(c) In addition, the occurrence of loud or unruly gatherings on private property where controlled substances are possessed, consumed, sold, exchanged, given away or manufactured in violation of Chapter 453 or Chapter 454 of NRS is harmful to those engaging in such activities and a threat to public health, safety, quiet enjoyment of residential property and general welfare;

(d) Underage persons often obtain alcoholic beverages or access to illegal controlled substances at gatherings held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the underage service, consumption and/or access. Persons responsible for the occurrence of loud or unruly gatherings on private property over which they have possession or control have failed to ensure that alcoholic beverages are neither served to nor consumed by underage persons at these gatherings;

(e) Landlords have failed to prevent the occurrence or reoccurrence of loud or unruly gatherings on private property they lease to tenants, including those where alcoholic beverages are served to or consumed by underage persons, or where controlled substances are possessed, consumed, sold, exchanged, given away or manufactured in violation of Chapter 453 or Chapter 454 of NRS, which seriously disrupts the quiet enjoyment of neighboring residents;

(f) Problems associated with loud or unruly gatherings at which alcoholic beverages are served to or consumed by underage persons, or where illegal controlled substances are possessed or consumed, are difficult to prevent and deter unless the Carson City Sheriff's Office has the legal authority to direct the host to disperse the gathering;

(g) Control of loud or unruly gatherings on private property where alcoholic beverages are served to or consumed by underage persons, or where controlled substances are possessed, consumed, sold, exchanged, given away or manufactured in violation of Chapter 453 or Chapter 454 of NRS, is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;

(h) Persons held responsible for abetting or tolerating such loud or unruly gatherings will be more likely to properly supervise or stop such conduct at gatherings held on property under their possession or control;

(i) In the past and present, law enforcement, fire and other emergency response services personnel have and are required to respond, sometimes on multiple occasions, to loud or unruly gatherings on private property at which alcoholic beverages are served to or consumed by underage persons, or where controlled substances are possessed, consumed, sold, exchanged, given away or manufactured in violation of Chapter 453 or Chapter 454 of NRS, and responses to such gatherings result in a disproportionate expenditure of public safety resources of the Carson City, which are underwritten by general taxes paid to the City by its taxpayers and residents, and which delay police responses to regular and emergency calls to the rest of Carson City. Additionally, underage drinking at such gatherings and illegal drug activities have resulted in disproportionately higher numbers of persons driving while intoxicated, substance abuse, increased social violence, and incidents of sexual assault.

(j) The intent of this Ordinance is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. An ordinance that imposes strict liability on property owners and other responsible persons for the nuisances created by loud and unruly gatherings herein described is necessary to deter and prevent such gatherings. Persons who actively and passively aid, allow or tolerate loud or unruly gatherings shall be held strictly liable for the nuisances created by such gatherings and the costs associated with responding to such gatherings.

### Section 3. Purposes.

(a) The purposes of this Ordinance are:

(1) to protect public health, safety and general welfare;

(2) to enforce laws prohibiting the service to and consumption of alcoholic beverages by underage persons, and the possession, consumption, sale, exchange, giving away or manufacture of controlled substances in violation of Chapter 453 or Chapter 454 of NRS; and

(3) to reduce the costs of providing police, fire and other emergency response services to loud or unruly gatherings.

(b) These purposes are implemented or encouraged by imposing a civil money penalty against social hosts and landowners (including landlords) allowing loud or unruly gatherings, as well as by imposing a civil fee for the recovery of costs incurred by Carson City in providing law enforcement, fire and other emergency response services for loud or unruly gatherings, including those where alcoholic beverages are served to or consumed by underage persons, or where controlled substances are possessed, consumed, sold, exchanged, given away or manufactured in violation of Chapter 453 or Chapter 454 of NRS.

#### Section 4. Definitions.

For the 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" means:

- 1) Beer, ale, porter, stout and other similar fermented beverages, including sake and similar products, or any name or description containing one-half of 1 percent or more alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor;
- 2) Any beverage obtained by the fermentation of the natural content of fruits or other agricultural products containing sugar, of not less than one-half of 1 percent of alcohol by volume; or
- 3) Any distilled spirits commonly referred to as ethyl alcohol, ethanol or spirits of wine in any form, including all dilutions and mixtures thereof from whatever process produced.

(c) "Controlled substance" means a drug, immediate precursor or other substance which is listed in Schedule I, II, III, IV or V for control by the Nevada State Board of Pharmacy pursuant to NRS 453.146.

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

(e) "Loud or unruly gathering" means a party or gathering of three (3) or more persons at or on a residence or other private property upon which loud or unruly conduct occurs. Such loud or unruly conduct includes but is not limited to:

- 1) excessive noise;

- 2) excessive traffic;
- 3) obstruction of public streets by crowds or vehicles;
- 4) public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
- 5) any service to or consumption of alcohol or alcoholic beverages by any underage person, except as permitted by applicable state law or ordinance;
- 6) unlawful acts concerning controlled substances, including but not limited to possession, consumption, sale, exchange, giving away or manufacture of controlled substances in violation of Chapter 453 or Chapter 454 of NRS;
- 7) assaults, batteries, fights, domestic violence or other disturbances of the peace;
- 8) vandalism;
- 9) litter; and
- 10) any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare.

A loud or unruly gathering shall constitute a public nuisance.

(f) "Residence or other private property" means a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a tent, pavilion, gazebo, 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.

(g) "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;

4) any other costs recoverable in accordance with NRS 41.139.

(h) "Responsible person" means a person or persons with a right of possession or control in the residence or other private property on which a loud or unruly gathering is conducted, including, but not limited to:

1) an owner of the residence or other private property, meaning the record owner of the title to property as of the time of the loud or unruly gathering, wherever that person or entity may currently 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 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.

If a responsible person for the gathering is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this Ordinance. To incur liability for response costs imposed by this Ordinance, the 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 response costs. This Ordinance therefore imposes vicarious as well as direct liability upon a responsible person.

(i) "Underage person" means any person under twenty-one years of age.



## Section 5. Responsibility for Proper Property Management.

Every owner, occupant, lessee or holder of any possessory interest of a residence or other private property within Carson City 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 Ordinance. The owner of the property remains liable for such violations regardless of any contract or agreement with any third party regarding the property.

## Section 6. Penalties for Violation of Ordinance.

(a) It shall be 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, aid, allow, permit or condone a loud or unruly gathering at a residence or other private property.

(b) As a public nuisance, the loud or unruly gathering may be summarily abated by the Sheriff of Carson City by all reasonable means, singularly or in combination, including but not limited to:

- 1) an order requiring the gathering to be disbanded;
- 2) issuance of a civil citation under this Ordinance;
- 3) issuance of a citation and/or arresting of any and all law violators under any other applicable ordinances or state statutes; and
- 4) employing the abatement procedures, fines and penalties set forth in Carson City Municipal Code Chapter 8.08 (Nuisances) and Chapter 8.09 (Enforcement Provisions for Nuisances) against the responsible person.

(c) A violation of this Ordinance subjects any and all responsible persons to the following civil money penalties:

- 1) \$250.00 for the first violation.
- 2) \$500.00 for second violation of this section at the same residence or other private property, or by the same responsible person, within a twelve month period.

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3) \$1,000.00 for a third or subsequent violation of this section at the same residence or other private property, or by the same responsible person, within a twelve-month period.

(d) The fines prescribed at subsection (c) are in addition to any response costs that may be assessed pursuant to this Ordinance.

(e) The second, third or subsequent violation fines prescribed at subsections (c)(2) and (c)(3) are payable whether or not the responsible person for such loud or unruly gathering is different from the responsible person for any prior loud or unruly gathering at the residence or other private property.

(f) The fine schedule prescribed at subsection (c) is a rolling schedule, meaning that in calculating the fine payable the Carson City Sheriff shall count backward starting from the date of the most recent loud or unruly gathering to determine how many prior loud or unruly gatherings have taken place at the residence or other private property in question during the statutory twelve-month period. A warning given pursuant to this Ordinance shall remain in effect for the residence or other private property at a given address until a full twelve-month period has elapsed during which there have been no response to a loud or unruly gathering at that residence or other private property.

(g) In the event that an underage person is found to be a responsible person as defined by this Ordinance, the underage person or the parents or guardians of the underage person may apply to the Department of Alternative Sentencing to allow the juvenile to perform community service to satisfy all or a portion of the fines set forth in this section. The Department of Alternative Sentencing retains discretion to admit or deny admission to the community service program as the Department's standards and program policies allows. Failure to gain admission to community service programs, or failure to complete community service, shall restore the civil fine or penalty obligation.

(h) The fines set forth in this section may be appealed pursuant to Section 10. The payment of any such fines shall be stayed upon any timely appeal.

**Section 7. Notice of Loud or Unruly Gathering; Posting; Removal of Notice Prohibited; Right to Contest Posting; Written Warning to Responsible Person. Additional Penalties for Violation of Ordinance.**

(a) Contents of Notice. The residence or other private property at which the loud or unruly gathering occurs shall be posted with a notice stating:

- 1) That a loud or unruly gathering has occurred at the residence or other private property;
- 2) The date of the loud or unruly gathering;
- 3) That any subsequent loud or unruly gathering on the same residence or other private property within a twelve month period shall result in liability for response costs against responsible persons as provided in Section 8 of the Ordinance; and
- 4) The right to contest the posting as provided in subsection (d) of this Section.

(b) Posting requirements. The residence or other private property shall be posted with a notice as provided in this section each time a loud or unruly gathering occurs. A responsible person, if present, or, in the absence of a responsible person, any occupant of the residence or other private property shall be consulted as to the location of which such notice is posted in order to achieve both the security of the notice and its prominent display. In the event that a residence or other private property is already posted at the time of a subsequent posting, the twelve month period from the date of the existing posting shall be the twelve month period from the date of the subsequent posting. Once a residence or other private property is initially posted as a result of a loud or unruly gathering and the conduct causing the gathering to be loud or unruly has ceased, a resumption of loud or unruly behavior on the residence or other private property resulting in another law enforcement, fire or other emergency response shall constitute a new and separate loud or unruly gathering for purposes of this section. The failure by a responsible person, if present, or other occupant of the residence or other private property to cooperate with the emergency responder to consult as to the location of the notice is a civil violation carrying a penalty of a minimum, mandatory \$100.00 civil penalty, in addition to any other penalties which may be imposed under this Ordinance.

(c) Removal of Notice prohibited. All responsible persons and any occupant of the residence or other private property shall be responsible for ensuring that the notice is not removed, defaced, or concealed. The removal, defacement, or concealment of a posted notice is a civil violation carrying a penalty of a minimum, mandatory \$100.00 civil penalty, in addition to any other penalties which may be imposed under this Ordinance.

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(d) Right to Contest posting.

1) Any responsible person may contest the posting of the notice by filing a written petition for review with the municipal court requesting that the court determine whether justification existed for posting of the notice under the provisions of this section. The petition must be filed within ten (10) days after the posting of the notice or, if the notice is given by mail, within fifteen (15) days after the date of the mailing of the notice, and not thereafter. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the written petition and shall notify both the petitioner and district attorney's office of the hearing date. At the hearing, the City has the burden of proving by a preponderance of evidence that the posting of the notice was justified pursuant to the provisions of this section.

2) An owner of a posted residence or other private property, at any time after the posting or the mailing of the notice, may petition the municipal court for an order directing the removal of the notice on the grounds that the owner has taken reasonable and necessary actions, such as evicting a tenant responsible for the violation, to prevent the occurrence of a subsequent loud or unruly gathering at the posted location. The court shall set a time and date for a hearing to be held no later than fifteen (15) days after receipt of the petition and shall notify both the petitioner and the district attorney's office of the hearing date. At the hearing, the petitioner has the burden of proving by a preponderance of evidence that the petitioner has taken reasonable and necessary actions to prevent the occurrence of a subsequent loud or unruly gathering. This petition process is not available to an owner who was present at the loud or unruly gathering and engaged in conduct causing the gathering to be loud or unruly.

Section 8. Recovery of Response Costs.

(a) 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 Carson City within a twelve-month period of a warning given to a responsible person for a loud or unruly gathering, all responsible persons shall be jointly and severally liable for the City's costs of providing response costs for that response and all subsequent responses during the warning period.

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

- 1) The official has determined that a loud or unruly gathering exists; and
- 2) Responsible person(s) will be charged for any response costs required for subsequent responses to the scene for a loud or unruly gathering within a twelve-month period.

(c) Only one warning will be given to a responsible person(s) pursuant to this section before the City assesses response services costs pursuant to Section 8. If a responsible person cannot be identified at the scene, the official may issue a warning to one or more persons identified in Section (4)(h) and/or subsequently return to the residence or other private property and issue the warning to a then-present responsible person. Warnings given to responsible persons who do not reside at the residence or other private property in question shall be delivered by first-class or certified mail.

#### Section 9 Billing and Collection.

(a) The amount of response costs shall be deemed a debt owed to Carson City by the responsible person(s) held liable in Section 8 for the loud or unruly gathering 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 Consolidated Municipality of Carson City for recovery for such fees, including reasonable attorney fees.

(b) Notice of the costs for which the responsible person is liable shall be mailed via first-class or certified mail within 21 days of the response giving rise to such costs. The notice shall contain the following information:

- 1) the name of the person(s) being held liable for the payment of such costs;
- 2) the address of the residence or other private property where the loud or unruly gathering occurred;
- 3) the date and time of the response;

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4) the law enforcement, fire or emergency service provider who responded;

5) the date and time of any previous warning given pursuant to Section 7 and/or previous responses to loud or unruly gatherings at the residence or other private property in question within the previous twelve months; and

6) an itemized list of the response costs for which the person(s) is being held liable.

(c) The responsible person must remit payment of the noticed response costs to the Billings and Collections Office within thirty (30) days of the date of the notice. The payment of any such costs shall be stayed upon a timely appeal made pursuant to Section 11.

#### Section 10. Reservation of Legal Options.

Nothing in this Ordinance shall be construed as a waiver by the Carson City of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures, where applicable. The procedure provided for in this Ordinance is in addition to any other statute, ordinance or law, civil or criminal. This Ordinance in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Ordinance.

#### Section 11. Appeals.

Any person upon whom is imposed a civil fine or penalty pursuant to Section 6, or upon whom is imposed an administrative penalty or response costs recovery fees pursuant to Sections 7 and 8 shall have the right to seek an administrative hearing to review the imposition of such penalty or fees, pursuant to the procedures established in Carson City Municipal Code §§ 8.09.340 – 8.09.480 for review of nuisance enforcement actions.

#### Section 12. Severability.

If any provisions of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

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Section 13. Protected Activities.

This Ordinance shall not apply to activities protected by Article I of the United States Constitution or Article I, Sections 9 or 10 of the Nevada Constitution.

Section 14. Effective Date.

This Ordinance shall take effect on \_\_\_\_\_.

SECTION II:

That no other provisions of Title 8, Nuisances, of the Carson City Municipal Code are affected by this Ordinance.

PROPOSED THIS \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

PROPOSED by \_\_\_\_\_.

PASSED on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

VOTE:

AYES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAYES:

\_\_\_\_\_

ABSENT:

\_\_\_\_\_

\_\_\_\_\_  
Marv Teixeira, Mayor

## COMMENTARY ON SOCIAL HOST LIABILITY ORDINANCE FOR CARSON CITY

This memorandum provides additional information and commentary on the Social Host Liability Ordinance, applicable to specific sections of the proposed ordinance. Also included are sample exhibits of the notice of violation given to responsible persons after City emergency responders encounter a loud or unruly gathering (**Exhibit A**) and the notice of liability for response costs which is given to responsible persons after the second such loud or unruly gathering. (**Exhibit B**).

### Section 1. Short Title.

(No comment necessary).

### Section 2. Legislative Findings.

#### COMMENT

With strict liability offenses, liability and the duty to take affirmative action flow not from the wrongdoer's direct illegal activity that causes widespread harm to others or his or her knowledge of or intent to cause such harm (providing or furnishing alcoholic beverages, allowing or sponsoring illegal drug activity, public disturbances, etc.) but rather, and quite simply, from his or her very possession and control of the residence or other private property on which the loud or unruly gathering occurs. If scienter or knowledge is believed necessary to show a violation, however, then do not include following: An ordinance that imposes strict liability on property owners and other responsible persons for the nuisances created by loud or unruly gatherings is necessary to deter and prevent such gatherings. Persons who actively and passively aid, allow or tolerate loud or unruly gatherings shall be held strictly liable for the nuisances created by such gatherings and the costs associated with responding to such gatherings.

This section on findings describes the reasons of the Board of Supervisors for enacting a social host liability ordinance. The findings are included in the board of supervisors' enactment of the ordinance. It is recommended that such findings be include in the published final version of the ordinance.

### Section 3. Purposes.

#### COMMENT

Findings and purposes provide guidance to courts interpreting legislative intent and publicly explain the goals and objectives of a city council or board of county commissioners in enacting the ordinance. *Valley Outdoor, Inc. v. County of Riverside*, 337 F.3d 1111, 1114 (9th Cir. 2003) [county statement of legislative purpose as evidence of legislative intent in passing county ordinance]. "In determining what the Legislature



intended, the title of the statute may be considered in construing the statute. Finally, it is clear that legislative intent governs the construction of a statute or ordinance and such intent must be gathered from considerations of the entire statute or ordinance, and not from consideration of only one section thereof." *Minor Girl v. Clark County Juvenile Court Services* (1977) 87 Nev. 544, 548, 490 P.2d 1248.

#### Section 4. Definitions.

#### COMMENT

Section 4 provides definitions for the other sections of the Ordinance. The definitions help clarify the rights and obligations of owners, tenants, and other persons in control of the property on which a loud or unruly gathering or party occurs. The definition of alcoholic beverages is identical to the relevant definition in NRS 202.015.

These definitions provide latitude to law enforcement to respond effectively to underage drinking gatherings. For instance, there must be "three or more persons" for a loud or unruly gathering to be found. This definition provides sensible enforcement potential, but the Board may decide to change this number constituting to be a "gathering." Additionally, the term "loud or unruly gathering" permits enforcement based solely on the consequences of drinking or drug-using parties, including underage parties. In other words, an emergency responder may find that a loud or unruly gathering exists even if the officer makes no finding of public drunkenness, unlawful consumption of alcoholic beverages, illegal activities involving controlled substances, or unlawful service to or consumption of alcoholic beverages by an underage person. Instead, the officer may find a loud or unruly gathering exists based on evidence there was a gathering of three or more persons resulting in excessive noise, excessive traffic, obstruction of public streets or crowds that have spilled into public streets, assaults, batteries, fights, domestic violence, vandalism, and/or litter. While the ordinance is aimed to deter underage drinking activity, social host liability for the hosting of any out of control party or gathering, whether or not underage people are present

Nevada state law does not preclude a local governmental entity from enacting by ordinance an additional or broader restriction on underage drinking. See NRS 202.020.

"Loud or unruly gathering" is written to include unlawful acts concerning controlled substances, including but not limited to possession, consumption, sale, exchange, giving away or manufacturing controlled substances in violation of Chapters 453 or 454 of NRS. "Controlled substance" is defined consistently with NRS 0.031.

"Response costs" include costs recoverable pursuant to NRS 41.139, providing that a peace officer, firefighter or emergency medical attendant may bring and maintain an action for damages for personal injury caused by the willful act of another, or by another's lack of ordinary care or skill in the management of his property, if the conduct  
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causing the injury violated an ordinance or regulation prohibiting resistance to or requiring compliance with an order of a peace officer or firefighter.

#### Section 5. Responsibility for Proper Property Management.

##### COMMENT

Section 5 provides that a property owner is liable for violating the ordinance (if certain conditions are met, described later in the ordinance). Under this provision, the owner can be held liable even if he/she has leased the property and does not have day-to-day responsibility for the property's management.

#### Section 6. Penalties for Violation of Ordinance.

##### COMMENT

This section makes a violation of its terms a civil offense for public nuisance and imposes strict liability. As a civil strict liability offense, the prosecution is not required to prove criminal intent, that is, that the responsible person actually knew or should have known that he or she allowed a loud or unruly gathering on his or her private property.

By drafting the ordinance in this manner, law enforcement could still exercise traditional law enforcement discretion and, in appropriate circumstances, provide an oral warning to a first time offender rather than a \$250 penalty. The text of the draft notifies residents, however, that the penalties for first and subsequent violations shall be the amounts specified in the ordinance.

The ordinance is also worded to allow a responsible juvenile/underage person to perform community service in lieu of payment of a civil fine, at the request of the parent or the juvenile. This is subject to discretion of the Community Service division.

#### Section 7. Notice of Loud or Unruly Gathering; Posting; Removal of Notice Prohibited; Right to Contest Posting; Written Warning to Responsible Person.

##### COMMENT

In addition to imposing civil penalties of \$250 and up against responsible persons, as set forth in Section 6, the Ordinance in Section 7 requires a posting on the premises, notifying responsible persons and residents that a loud or unruly gathering occurred at the premises on a certain date, that a subsequent loud or unruly gathering within 12 months of the initial response shall result in the imposition of response costs against responsible parties, and of the right of certain persons to contest the posting.

The posting remains on the premises for 12 months from the date of the initial loud or unruly gathering, which is extended every time there is a subsequent loud or unruly

gathering on the premises. Responsible persons and residents of the premises are subject to a separate \$100 civil penalty if they fail to consult with the emergency responder as to the location of the posted notice encourage the occupants to cooperate and ensure that the posting is not removed, defaced, or concealed. Responsible persons and residents may appeal the posting.

Offenders against whom response costs have been imposed for subsequent loud or unruly gatherings likely will argue that imposition of response costs for subsequent events is an unconstitutional deprivation of their right to due process because they lacked notice of the initial loud or unruly gathering. Hence, this section includes detailed provisions notifying responsible persons of the occurrence of a loud or unruly gathering, what will happen if emergency responders are called out on a subsequent occasion, as well as detailed appellate procedures protecting the responsible person's right to contest the posting.

#### Section 8. Recovery of Response Costs.

##### COMMENT

The ordinance sets forth a multi-tiered enforcement mechanism against responsible persons. At the first tier of enforcement, i.e., at the first response stage, the responsible person would be held liable for a civil penalty of \$250 for a first time violation pursuant to Section 6. At the first tier of enforcement, the responsible person would not be liable for recovery of response costs.

With respect to the second tier of enforcement, i.e., when emergency response providers are required to make a follow-up call to either the same gathering or another gathering within 12 months at the same location, the responsible person would be held liable for an increased penalty of \$500, as well as for response costs, which could be hefty. For a third or subsequent response to either the same gathering or another gathering within 12 months at the same location, the responsible person would be held liable for an even larger penalty of \$1,000, as well as for any additional response costs not previously imposed.

Section 8 sets forth the conditions under which a responsible person shall be held liable for the recovery of response costs. This occurs when (1) an emergency response provider conducts a first response to the residence or other private property and determines that a loud or unruly gathering exists; (2) the emergency response provider gives a first warning to the responsible person; and (3) an emergency response provider conducts a subsequent response and either the loud or unruly gathering has not abated or another loud or unruly gathering is occurring at the residence or other private property.

An emergency response provider's determination that a loud or unruly gathering exists can include, for example, evidence that an underage drinking gathering is or was underway, in the form of the responding provider's personal knowledge or eyewitness

accounts of third parties. Such evidence could include evidence of: underage persons fleeing the host's residence, presence of used or unused kegs, bottles, and cans, drugs or paraphernalia, vehicles on the property not belonging to the host, complaints from neighbors, and property damage, as well as more direct evidence such as intoxicated underage persons or persons found to be possessing or dispensing illegal drugs.

The written warning required by Section 8 to be given to each responsible person is in addition to the issuance of a citation for a civil penalty pursuant to Section 6 or to the posting at the premises pursuant to Section 7. The written warning is yet another layer of due process, providing notice to the responsible person that a loud or unruly gathering has occurred once and if responders have to return to the scene of the same gathering later in the evening or of a subsequent gathering, response costs shall be imposed against the responsible person.

An example Warning notice is attached as Exhibit A. It is desirable to enable responders to leave warnings with ease and efficiency. The Notice could be included in the Ordinance and enacted as part of it. At the same time, it may be impractical for municipalities to insist that responders, who have a multitude of duties and responsibilities, to always have copies of Exhibit A available. In short, practical consideration should be given to a variety of means by which the notice information required by Section 7 can be provided by emergency responders—police, fire, and other emergency responders.

Recovery of response costs is a civil matter. Therefore, response costs recovery are imposed as a strict liability public nuisance offense, rather than as a criminal offense requiring proof of criminal intent (*scienter* or knowledge) beyond a reasonable doubt.

#### Section 9. Billing and Collection.

##### COMMENT

The billing mechanism is that should already in place in Carson City. Exhibit B is a sample notice for response cost assessment for purposes of Section 9.

#### Section 10. Reservation of Legal Options.

##### COMMENT

Section 10 provides that the City does not waive its rights to seek reimbursement through other available legal means and that the ordinance does not restrict law enforcement in making arrests for any criminal offenses arising from illegal drug activities, an underage drinking event or other loud or unruly gathering. With respect to the former, this provision ensures that the City would not be precluded from bringing an action for public nuisance based on the same set of facts giving rise to a violation of the loud or unruly gathering ordinance.

Section 11. Appeals.

COMMENT

Due process arguably requires some administrative appeal procedure for both the imposition of fines/penalties and response costs. As with Section 9, regarding Billing and Collection, the appeal section references the existing administrative appeal process in Carson City for public nuisances – CCMC §§ 8.09.340 – 8.09.480.

Section 11. Severability.

(Standard provision to allow enforcement of remaining sections not invalidated by court rulings).

Section 12. Protected Activities.

COMMENT

This section protects against conduct protected by Article I of the United States Constitution and similar provisions in the Nevada Constitution, Art. I, sections 9 – 10. First Amendment speech and assembly guarantees are protected, even if they are “loud or unruly” under one or more definitional phrases in Section 4..

Section 12. Effective Date.

(No commentary required).

**EXHIBIT A**

**IMPORTANT NOTICE REGARDING PUBLIC NUISANCE**

PURSUANT TO ORDINANCE NO. \_\_\_\_\_, AS A RESULT OF A PRIOR LOUD OR UNRULY GATHERING AT PREMISES, THE NEXT LOUD OR UNRULY GATHERING WILL RESULT IN CIVIL RESPONSE COSTS IMPOSED UPON ALL PARTICIPANTS AND SPONSORS OF THE EVENT, AND ALL PROPERTY OWNERS AND TENANTS OF THE PREMISES.

NOTICE IS HEREBY GIVEN THAT, pursuant to Ordinance No. \_\_\_\_\_, on \_\_\_\_\_, 200\_, at \_\_\_\_\_ a.m./p.m., the Carson City Sheriff's Department found that a public nuisance caused by a loud or unruly gathering occurred at the residence or other private property located at \_\_\_\_\_ ("premises").

Such a public nuisance constituted a threat to public health, safety, quiet enjoyment of residential property or general welfare. If there is a subsequent event on these premises which constitutes such a public nuisance and necessitates the intervention of the Sheriff's Department on or before \_\_\_\_\_, (twelve months from the date of first responder intervention) every person with a right of possession in the premises on which such public nuisances are conducted, including, but not limited to, an owner or tenant of the premises, a person in charge of the premises; and the person who organizes or conducts the gathering or any other person accepting responsibility for such a gathering, shall be jointly and severally liable for the civil penalties connected with this response as set forth in Ordinance No. \_\_\_\_\_.

The Carson City Sheriff's Department has posted the premises with a notice stating that a loud or unruly gathering has occurred at the premises, the date of the gathering, and that any subsequent loud or unruly gathering shall result in liability for response costs associated with responses by law enforcement, fire, and other emergency response providers to the subsequent gathering. Responsible persons have the right to contest the posting, as provided below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Signature of Officer issuing notice)

(Name of Officer)

(Title of Officer) \_\_\_\_\_

(Phone Number) \_\_\_\_\_

## EXHIBIT B

Date:

To:

Dear:

Pursuant to Ordinance No. \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., Officer \_\_\_\_\_ of the Carson City Sheriff's Department found that a public nuisance caused by a loud or unruly gathering occurred at the residence or other private property located at \_\_\_\_\_ ("premises"). Such a public nuisance constituted a threat to public health, safety, quiet enjoyment of residential property or general welfare.

This is the \_\_\_\_\_ (second/third/fourth, etc.) such public nuisance on these premises within the last twelve (12) months and thus response costs of \$\_\_\_\_\_, are imposed on you.

On \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., Officer \_\_\_\_\_ of the Carson City Sheriff's Department found that a public nuisance caused by a loud or unruly gathering occurred on these premises.

On \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., Officer \_\_\_\_\_ of the Carson City Sheriff's Department found that a public nuisance caused by a loud or unruly gathering occurred on these premises.

[On \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m., Officer \_\_\_\_\_ of the Carson City Sheriff's Department found that a public nuisance caused by a loud or unruly gathering occurred on these premises.] (Repeat as needed for number of prior occurrences).

You must remit payment of the noticed response costs to the Carson City Billings and Collections Office at the address appearing below, within thirty (30) days of the date of the notice.

Your liability is based on the fact that you were:

- ☐ an owner of the residence or other private property;
- ☐ a tenant or lessee of the residence or other private property;
- ☐ the landlord of another person responsible for the gathering;

☐ the person in charge of the residence or other private property;

☐ the person who organized, supervised, officiated, conducted or controlled the gathering; and/or

☐ any other person accepting responsibility for such a gathering.

The response costs for which you are being held liable are:

☐ \$\_\_\_\_\_, for 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 the above-described loud or unruly gatherings, and the administrative costs attributable to such response(s);

☐ \$\_\_\_\_\_, for 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;

☐ \$\_\_\_\_\_, for the cost of repairing any City-owned 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.

You have the right to appeal the imposition of response costs recovery fees pursuant to the procedures established by Carson City for appealing the abatement of public nuisances. See, Carson City Municipal Code sections 8.09.430 – 8.09.480.

The amount of response costs shall be deemed a debt owed by you to the Consolidated Municipality of Carson City for the loud or unruly gathering and, if you are a juvenile, by your parents or guardians. Any person owing such costs shall be liable in a civil action brought in the name of Carson City for recovery for such fees, including reasonable attorney fees.

Sincerely yours,

(Name, title, address and phone number of signatory)