

## ORDINANCE NO. 1070

### AN ORDINANCE OF THE CITY OF LOS BANOS ADDING A NEW CHAPTER 10 TO TITLE 5 OF THE LOS BANOS MUNICIPAL CODE RELATING TO HOSTING GATHERINGS OF UNDERAGE DRINKERS AND AMENDING CHAPTER 11 OF TITLE 4 RELATING TO ADMINISTRATIVE CITATIONS

WHEREAS, the City of Los Banos, pursuant to its police powers has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

WHEREAS, underage persons often obtain alcoholic beverages at parties, gatherings, or events held at private residences or at rented residential and commercial premises that are under the control of a person who has failed to ensure that alcoholic beverages are neither possessed nor consumed by minors; and

WHEREAS, the occurrence of such gatherings is harmful to the minor themselves and a threat to public health, safety, quiet enjoyment of private property and general welfare because the gatherings typically become loud and unruly which results in one or more of the following: excessive noise, excessive traffic, obstruction of public streets and property, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, litter; and

WHEREAS, problems associated with such gatherings at which underage drinking occurs are difficult to prevent and deter unless police officers acting on behalf of the City have legal authority to direct the host to disperse the gathering; and

WHEREAS, the City Council of the City of Los Banos finds and declares that the purpose of this ordinance is:

- (1) to protect public health, safety and general welfare;
- (2) to enforce laws prohibiting the consumption of alcohol by minors;
- (3) to reduce the costs of providing police services to parties, gatherings, or events requiring a response by requiring party hosts to ensure minors are not consuming alcoholic beverages.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Los Banos does hereby add the following Chapter 10 to Title 5, to read as follows:

## **Chapter 10 HOSTING GATHERINGS OF UNDERAGE DRINKERS**

5-10.01 Purpose and Intent.

5-10.02 Definitions.

5-10.03 Public nuisance.

5-10.04 Penalties for violation of the chapter.

5-10.05 Recovery of response costs.

5-10.06 Billing and collection of response costs.

5-10.07 Special fund.

5-10.08 Protected activities.

5-10.09 Severability.

### **5-10.01 Purpose and Intent.**

- (a) To enforce laws prohibiting the service to and consumption of alcoholic beverages by underage persons;
- (b) To protect public health, safety, general welfare and quiet enjoyment of residential property and properties neighboring one of these gatherings; and
- (c) To establish standards and controls of parties, gatherings or assemblages involving underage persons consuming alcoholic beverages on private property.

### **5-10.02 Definitions.**

For the purposes of this chapter, the following definitions shall apply:

- (a) "Alcoholic beverage" shall mean alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half (1/2) 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.
- (b) "Juvenile" means any person under eighteen (18) years of age.
- (c) "Gathering of underage drinkers" shall mean a party, event or gathering where two (2) or more underage persons are present at a residence or other private property in which alcoholic beverages are being consumed or possessed by any underage person.

(d) "Residence" or "other private property" shall mean 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.

(e) "Response Cost" are the costs associated with response by law enforcement, fire, or other emergency response providers to a gathering, 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 a gathering, and the administrative cost associated with or attributed to such response(s);

(2) the cost of any medical treatment for any law enforcement, code enforcement, fire, or other emergency response personnel injured responding to, remaining at, or leaving the scene of a 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 gathering; and

(4) any other allowable costs related to enforcement of sections 5-10.04.

(f) "Responsible person" shall mean a person or persons with a right of possession of the residence or other private property at which a gathering of underage drinkers is conducted. A responsible person need not be present at such gathering and prior knowledge of the gathering of underage drinkers is not a prerequisite to a finding that any specific individual is a responsible person as defined by this section. Responsible person includes, but is not limited to:

(1) Owner(s) and/or lessee(s) of the property where a gathering of underage drinkers is taking place, including the record owner of the title to property, wherever that person or entity may currently reside;

(2) Person(s) hosting a gathering of underage drinkers;

(3) Person(s) receiving money or other consideration for granting access to a gathering of underage drinkers;

(4) Parent(s) or legal guardian(s) of a minor who is also a responsible person;

(5) Tenant of the residence or other private property;

(6) Person(s) in charge of the residence or other private property.

(g) "Underage person" shall mean any person under twenty-one (21) years of age.

#### **5-10.03 Public nuisance.**

(a) Any gathering of underage drinkers shall constitute a public nuisance, as an immediate threat to public health and safety.

(b) As a public nuisance, the gathering of underage drinkers may be summarily abated by police 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 an administrative citation under this chapter;

(3) Issuance of a citation and/or arrest of any law violators under any other applicable ordinances and/or statutes.

#### **5-10.04 Penalties for violation of the chapter.**

(a) A violation of this chapter shall only be prosecuted as a civil penalty pursuant to the administrative citation procedures in Chapter 11 of Title 4 of the Los Banos Municipal Code. Notwithstanding Chapter 11, of Title 4, a violation subjects any and all responsible persons, as defined in this chapter, to a civil penalty of Five Hundred and No/100ths (\$500.00) Dollars.

(b) If the owner of the private property has leased the property to another person, such owner shall not be considered a responsible person until such owner receives notice of at least one previous gathering of underage drinkers on his property in the prior twelve (12) months. Notice shall be by a copy of the citation transmitted via certified mail, return receipt requested, and first class mail to the owner of the private property as recorded by the last equalized assessment roll of the Merced County Assessor.

(c) In the event that a gathering of underage drinkers is hosted by a juvenile, then the parents or guardians of that juvenile will be jointly and severally liable for any penalties incurred pursuant to this chapter.

(1) Alternative penalty for a first offense only: In the event a juvenile or one of his/her parents is found to be a responsible person as defined by this chapter, the juvenile and the juvenile's parents may complete a course on alcohol education and prevention of underage drinking approved by the Chief of Police, as an alternative to paying the entire first offense penalty of Five Hundred and No/100ths (\$500.00) Dollars. The cost of the course will be considered in the calculation of a reduced fine amount upon successful completion of the approved course. The intent of this alternative is to reduce but not eliminate the penalty for

an administrative citation pursuant to this chapter and the alternative fine will be determined at the sole discretion of the Chief of Police.

(d) A second violation of this chapter within twelve (12) calendar months subjects and all responsible persons, as defined in this chapter, to a civil penalty of One Thousand, Five Hundred and No/100ths (\$1,500.00) Dollars.

(e) Third and subsequent violations of this chapter within twelve (12) calendar months of the first violation subjects any and all responsible persons, as defined in this chapter, to a civil penalty of Three Thousand and No/100ths (\$3,000.00) Dollars as well as the recovery of response costs as described in 5-10.05 and 5-10.06.

#### **5-10.05 Recovery of response costs.**

(a) When a law enforcement, fire, or other emergency response provider makes an initial response to a gathering of underage drinkers, the official shall, in writing, inform any responsible person(s) for the gathering at the scene that:

(1) The official has determined that a gathering of underage drinkers exists; and

(2) That if emergency response providers make at least two (2) subsequent responses to the same location within a twelve (12) month period from the initial response, responsible person(s) will be charged for any response costs required for the third subsequent response, i.e., for the third response.

(b) Within thirty (30) calendar days of the initial response and each response thereafter, an additional written warning shall be transmitted via certified mail to the owner of the private property as recorded by the last equalized assessment roll of the Merced County Assessor;

(c) This section applies to the costs of abatement of the summary nuisance described in Section 5-10.03, and costs are recovered pursuant to California Government Code Section 38773.1 and Chapter 11 of Title 4 of the Los Banos Municipal Code.

#### **5-10.06 Billing and collection of response costs.**

(a) The response costs shall also be deemed a civil penalty and are collectable pursuant to the procedures in Chapter 11 of Title 4 of this Code. A person owing such costs shall be liable in an administrative civil proceeding for recovery for such fees.

(b) If the responsible person is a juvenile, then the juvenile's parents or guardians shall be liable for the response costs.

(c) Any citation issued for a violation of this chapter shall contain, at a minimum, the following information:

- (1) The name(s) 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 gathering of underage drinkers occurred;
- (3) The date and time of the response;
- (4) The law enforcement, fire or emergency service provider who responded;
- (5) The date(s) and time(s) of any previous warning(s) given pursuant to Section 5-10.06 and/or previous responses to gatherings of underage drinkers at the residence or other private property in question within the previous twelve (12) months;
- (6) An itemized list of the response costs for which the person(s) is being held liable. The police shall calculate and compile an itemized list of the applicable response costs; and
- (7) The imposition of a lien on the subject property in the event of nonpayment of response costs.

(d) If a timely request for an administrative hearing pursuant to Section 4-11.06 is not made, such costs, if unpaid within thirty (30) days of notice, shall become a lien against the property as is authorized by Government Code Section 38773.1.

(e) If, following an administrative hearing, appeal, or other final determination, the owner of the property is determined to be responsible for any costs pursuant to this section, such costs, if unpaid within thirty (30) days of notice of the final determination, shall become a lien against the property as is authorized by Government Code Section 38773.1.

(f) Under either subsections (d) and (e) of this section, a notice of a lien shall be filed with the County 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. The notice shall be served on the record owner as required in Government Code Section 38773.1.

It is the intent of the City Council that abatement costs incurred after the filing of the Notice of an Abatement Lien relates 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 shall cause a supplemental Notice of an 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 number of the original notice.

**Section 5-10.07: Special Fund.**

(a) There is hereby established a special fund for the purposes of receiving and expending civil penalties collected. This special fund shall be known and designated as the Prevention of Underage Drinking Fund.

(b) Expenditure of monies. The appropriation of all monies in the Prevention of Underage Drinking Fund shall be made exclusively for the purposes of Prevention of Underage Drinking Programs within the City of Los Banos. The Underage Drinking Program shall include the enforcement of, education for, and prevention of underage drinking. Expenditures shall include, but not be limited to; purchase of equipment, contractual services, material and supplies, or any other expenditures related to the prevention of underage drinking with the City of Los Banos. The administration of the fund shall conform to this Code and all accounting principles practiced by the City.

(c) Accumulation of monies in the funds. The balance remaining in the Prevention of Underage Drinking Fund at the close of any fiscal year shall be deemed to have been provided for a specialized purpose and shall be carried forward and accumulated in said fund for the purposes set forth herein.

**5-10.08 Protected activities.**

This chapter shall not apply to activities protected by Article 1, Section 4 of the California Constitution or the 1st or 14th Amendments of the United States Constitution.

**5-10.09 Severability.**

If any section, subsection, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that this chapter, and each section, subsection, sentence, clause and phrase hereof, would have been prepared, proposed, adopted, approved and ratified irrespectively of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 2. The City Council of the City of Los Banos does hereby add the following sub section to Title 4, Chapter 11 Section 4-11.01 (d) of the Los Banos Municipal Code.

(45) Section 5-10.01 through 10.09 of the Los Banos Municipal Code.

Section 3. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City

Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

Introduced by Council Member Sousa and seconded by Council Member Villalta on the 16<sup>th</sup> day of April 2008.

Passed on the 7<sup>th</sup> day of May 2008, by the following vote:

AYES: Council Members Brooks, Faria, Sousa, Villalta, Mayor Jones  
NOES: None  
ABSENT: None

APPROVED:

/s/ Tommy Jones  
Tommy Jones, Mayor

ATTEST:

/s/ Lucille L. Mallonee  
Lucille L. Mallonee, City Clerk