ORDINANCE NO. 13-\_\_\_\_

AN ORDINANCE OF THE COUNTY OF ORANGE, CALIFORNIA,

ADDING TITLE 3, DIVISION 19 TO THE CODIFIED ORDINANCES OF THE COUNTY OF ORANGE ESTABLISHING SOCIAL HOST LIABILITY FOR THE CONSUMPTION OR POSSESSION OF ALCOHOL BY PERSONS UNDER AGE 21 AT GATHERINGS

The Board of Supervisors of the County of Orange ordains as follows:

SECTION 1. Division 19 to Title 3 is hereby added to the Codified Ordinances of the County of Orange to read as follows:

Division 19

Social Host Liability

Section 3-19-1 Title

The title of this Division shall be “Social Host Liability.”

Section 3-19-2 Findings

The Board of Supervisors of the County of Orange finds as follows:

(a) The County of Orange, pursuant to police powers delegated to it by the California Constitution, has the authority to enact laws that promote the public health, safety, and general welfare of its residents;

(b) Underage Persons often obtain or consume Alcoholic Beverages at gatherings held on private Property that are under the control of a person who knows or should know of the underage Alcohol service or consumption. Persons responsible for the occurrence of gatherings on private Property over which they have possession or control have failed to ensure that Alcohol is neither served to nor consumed by Underage Persons at those gatherings;

(c) The occurrence of gatherings on private Property where Alcohol is served to or consumed by Underage Persons is harmful to Underage Persons themselves and is a threat to public health, safety, and general welfare;

(d) The United States Centers for Disease Control and Prevention has determined that the consumption of Alcohol by Underage Persons is a major public health problem and that Alcohol is the most commonly accessed and abused drug among youth in the United States;

(e) Underage consumption of Alcohol at gatherings on private Property has resulted in Underage Persons driving while intoxicated, increased violence, including sexual assaults, and increased criminal activity;

(f) Problems associated with gatherings at which Alcohol is served to or consumed by Underage Persons are difficult to prevent and deter unless the Orange County Sheriff has the legal authority to direct the Responsible Person to disperse the gathering and to issue a citation against the Responsible Person for the gathering;

(g) Control of gatherings on private Property where Alcohol is served to or consumed by Underage Persons is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;

(h) Holding persons responsible for abetting or tolerating gatherings at which Alcohol is served to or consumed by Underage Persons will increase the likelihood that gatherings will be properly supervised or that gatherings at which Alcohol is served to or consumed by Underage Persons will be stopped; and,

(i) In the past and present, the Orange County Sheriff has been and is required to respond, sometimes on multiple occasions, to gatherings on private Property where Alcohol is served to or consumed by Underage Persons, and responses to such gatherings result in a disproportionate expenditure of public safety resources in the County of Orange, which are underwritten by taxpayers who pay general taxes to the County of Orange, and further result in delays of law enforcement resources to regular and emergency calls to the rest of the County of Orange.

Section 3-19-3 Purpose and Intent

In enacting the Social Host Liability ordinance, is the intent of the Board of Supervisors of the County of Orange to:

(a) protect the public health, safety, and general welfare;

(b) enforce laws prohibiting the service to and consumption of Alcohol by Underage Persons;

(c) reduce the incidence of problems associated with the consumption of Alcohol by Underage Persons, including driving while intoxicated, violence, and other criminal activity;

(d) reduce the costs of providing public services, including the services of the Orange County Sheriff, by imposing an administrative fine against Responsible Persons to deter gatherings at which Alcoholic Beverages are served to or consumed by Underage Persons; and,

(e) reduce recidivism by enacting criminal penalties for repeated violations of the Division.

Section 3-19-4 Definitions

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

(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 and 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 consumption purposes either alone or when diluted, mixed, or combined with other substances.

(c) “Juvenile” means any person less than 18 years of age.

(d) “Property” means private property, including but not limited to a home, yard, garage, 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) “Responsible Person” includes but is not limited to:

(1) The person(s) who owns, rents, leases, or otherwise has possession of the Property;

(2) The person(s) in immediate control of the Property;

(3) The person(s) who organizes, supervises, sponsors, conducts, allows, controls, or controls access to the Underage Gathering.

If the Property is rented or leased, the lessor is not included as a Responsible Person under this Division unless he or she has immediate control of the Property or is a person, with actual knowledge of the Underage Gathering, as described in subsection (e)(3) of this section.

(f) “Underage Gathering” means a party or gathering of three or more persons at a Property at which Alcoholic Beverages are furnished to, possessed by, or consumed by one or more Underage Persons.

(g) “Underage Person” shall mean any person less than 21 years of age.

Section 3-19-5 Prohibition on Underage Gatherings

It is unlawful for a Responsible Person to allow, permit, or host an Underage Gathering on Property.

Section 3-19-6 Exempted Activities

This Division shall not apply to any of the following:

(a) A Responsible Person who takes all reasonable steps to prevent the furnishing to, possession by, or consumption of Alcoholic Beverages by Underage Persons. Reasonable steps include, but are not limited to, the following:

(1) preventing access to Alcoholic Beverages by Underage Persons;

(2) controlling the quantity of Alcoholic Beverages furnished at a Property;

(3) verifying the age of each person at a Property to ensure no Underage Persons are furnished, possess, or consume Alcoholic Beverages;

(4) supervising the activities of Underage Persons at a Property; and,

(5) requesting the assistance of law enforcement to exclude or remove Underage Persons possessing or consuming Alcoholic Beverages, or persons who furnish Alcoholic Beverages to Underage Persons.

(b) A Responsible Person who furnishes an Alcoholic Beverage to an Underage Person to whom the Responsible Person is the parent or legal guardian.

(c) Conduct protected by the United States and/or California Constitution, including religious activities protected by Article I, Section 4 of the California Constitution.

(d) Conduct regulated by state or federal law, including the California Alcoholic Beverage Act, in such a manner that the County of Orange is preempted or precluded from imposing additional regulation.

Section 3-19-7 Enforcement

The Orange County Sheriff and his or her authorized deputies are directed to enforce the provisions of this Division.

Section 3-19-8 Violations

A first violation of Section 3-19-5 shall result in an administrative citation and fine of $750.00. A second or subsequent violation of Section 3-19-5 shall constitute a misdemeanor, and upon conviction, shall be punished by a fine of not more than $1,000.00, or by imprisonment in the county jail of not more than six months, or by both.

Section 3-19-9 Enforcement and Collection

Fines assessed to Responsible Party are due and payable to the County of Orange upon issuance of the administrative citation. The Responsible Party shall pay fines assessed pursuant to Section 3-19-8 to the County of Orange at the address provided for payment in the administrative citation. Fines that remain unpaid after 60 calendar days of the issuance of the administrative citation shall be referred to the Orange County Treasurer-Tax Collector for collection as permitted by law.

Section 3-19-10 Appeal

(a) A Responsible Person may appeal the issuance of the administrative citation under section 3-19-8 by submitting a written request to the Orange County Clerk of the Board of Supervisors, at the address identified for the clerk in the administrative citation, for a hearing before a hearing officer. The request for a hearing must be received by the Clerk of the Board of Supervisors within 30 calendar days of the issuance of the administrative citation. The submission of a request for hearing shall not serve as a stay or tolling of any provision of Section 3-19-9. Upon receiving a timely request for a hearing from a Responsible Person, the Clerk of the Board shall schedule a hearing before a hearing officer and notify by certified mail, return receipt requested with a minimum of 10 calendar days’ notice to the Responsible Person of the date, time, and location of the hearing.

(b) At the hearing on the Responsible Person’s appeal, the hearing officer assigned by the Clerk of the Board of Supervisors shall consider the administrative citation under section 3-19-8 and the request for hearing under subdivision (a) of this section. The hearing officer shall consider the testimony of all competent persons, subject to reasonable limitations of cumulative testimony and other procedures promulgated by the Clerk of the Board of Supervisors pertinent to the issuance of the administrative citation and fine.

(c) The hearing officer may affirm the issuance of the administrative citation and/or the imposition of the fine. The hearing officer may revise, correct, modify, or vacate the administrative citation and/or the fine.

(d) The decision of the hearing officer shall be in writing and shall be served by certified mail, return receipt requested on the Responsible Person. The decision shall be final upon mailing. The County shall refund within 60 days of the decision of the hearing officer the amount of any fine paid under Section 3-19-8 that exceeds the amount of the fine established in the decision of the hearing officer.

(e) A Responsible Person may seek judicial review of the hearing officer’s decision in accordance with the provisions of California Government Code section 53069.4 by filing an appeal with the Superior Court of California, County of Orange within 20 calendar days after the service of the hearing officer’s decision.

Section 3-19-11 Severability

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Division, or application thereof to any person or place, is for any reason to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Division or its application to other persons or places. The Board of Supervisors hereby declares that it would have adopted this Division, and each section, subsection, subdivision, sentence, clause, phrase, or portion of thereof, irrespective of the fact that any one or more section, subsection, subdivision, sentence, clause, phrase, or portion of this Division, or the application thereof to any person or place, be declared invalid or unconstitutional.

Section 3-19-12 Reservation of Legal Options

Nothing in this Division shall be construed as a waiver by the County of Orange of its right to seek reimbursement for response costs through other legal remedies or procedures. The remedies and procedures in this Division are in addition to any other statute, regulation, or law, whether civil or criminal. This Division in no way limits the authority of the Orange County Sheriff, his or her authorized deputies, or any other authorized person to make arrests for any criminal offense arising out of conduct regulated by this Division.