



Office of the City Manager

CONSENT CALENDAR

March 20, 2007

To: Honorable Mayor and  
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Manuela Albuquerque, City Attorney

Subject: BAPAC Proposals—Second Follow-up Report on Second Response  
Ordinance Amendments and Social Host Ordinance

RECOMMENDATION

That the Council:

1. Adopt first reading of an ordinance amending Berkeley Municipal Code (BMC) Sections 13.48.030, 13.48.040 and 13.48.050 (Second Response Ordinance; Attachments 1.)
2. Adopt first reading of an ordinance adding new BMC Chapter 13.49. (Social Host Ordinance; Attachment 2.)

FISCAL IMPACTS OF RECOMMENDATION

Minor increase to civil penalties to partially offset costs of police response.

CURRENT SITUATION AND ITS EFFECTS

On January 30, 2007, the Council considered various staff recommendations relating to implementation of proposals made by the Berkeley Alcohol Policy Advisory Committee (BAPAC). This report addresses two of those recommendations: amendments to the Second Response Ordinance (BMC Chapter 13.48), and a new Social Host Ordinance (BMC Chapter 13.49).

Second Response Ordinance Amendments

One of those recommendations was to amend the Second Response Ordinance (BMC Chapter 13.48), which allows the police to fine the participants, sponsors, and/or premises owners of loud and unruly gatherings, if, after giving a warning, they have to return a second time to the party after posting a formal warning.

The proposed amendments clarified that multiple responses in a single night (as opposed to subsequent nights) would trigger civil penalties. They also lengthened the period during which a fine may be imposed for a second response from 60 days to 180 days, increased the fines, and modified the requirements for posting the required notice after a first response.

When it considered these amendments on January 30<sup>th</sup>, the Council expressed some concern about the possibility of police returning to an unruly gathering (i.e., a second response) before giving the host an adequate opportunity to abate the problem. It accordingly did not adopt the amendments, but instructed staff to return with an amendment to address this concern.

Staff brought such an additional amendment to the Council on February 13<sup>th</sup>.

Social Host Ordinance

The Council adopted the first reading of a new Social Host Ordinance (Chapter 13.49) on January 30<sup>th</sup>. In brief, that ordinance punishes persons who host parties at which minors consume alcoholic beverages.

Council Action on February 13, 2007

On February 13<sup>th</sup>, the Council declined to adopt the amendments to the Second Response Ordinance, or to adopt the second reading of the Social Host Ordinance, and instead scheduled a work session on both ordinances for February 27, 2007.

The major issues of concern to the Council were:

- the length of time during which a second response would trigger civil penalties under the Second Response Ordinance;
- the degree to which innocent hosts would be penalized under the Social Host Ordinance; and
- whether either or both ordinances should exempt from penalties persons who self-report violations in order to remedy obtain held in remedying them.

Council Direction from the February 27, 2007 Work Session

At the February 27<sup>th</sup> work session, the Council directed staff to return with amendments to the Second Response Ordinance (in addition those previously proposed) that would reduce the period during which a second response would trigger a civil penalty from 180

days to 120 days, but provide for 120-days extensions of the period in the event of a second response during the first 120-day period. This change is reflected in Section 13.48.040.H. (See, Attachment 1-A.) Under this provision the first 120-day period would be extended by another 120 days from the date of the second response. We believe this captures the Council’s intention in a workable and reasonable manner.

The Council also directed staff to return with a Social Host Ordinance that imposed strict liability on hosts or gatherings where minors consume alcohol, as well as a version that only penalizes hosts who know or reasonably should show that minors are consuming alcohol. The proposed Social Host Ordinance contains alternative provisions reflecting both choices, in the two sections numbered 13.49.030. (See Attachment 2.) In addition, The Council also directed staff to propose language that would limit the use of misdemeanor citations for violations of the Social Host Ordinance. This language is contained in Section 13.49.040.A.

Finally, the Council directed staff to include self-reporting exemptions in both ordinances. These have been included, in Section 13.48.040.G (Second Response Ordinance) and Section 13.49.030.E (Social Host Ordinance).

BACKGROUND

See above.

RATIONALE FOR RECOMMENDATION

See January 30, 2007 and February 13, 2007 reports.

ALTERNATIVE ACTIONS CONSIDERED

N/A.

CONTACT PERSON

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Zach Cowan, Assistant City Attorney	981-6950
Matt Orebic, Deputy City Attorney	981-9650

Attachments:

- 1: Amendments to Second Response Ordinance (redlined)
- 2: Social Host Ordinance

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) CHAPTER 13.48, CIVIL PENALTIES  
FOR MULTIPLE RESPONSES TO LOUD OR UNRULY PARTIES, GATHERINGS OR  
OTHER SIMILAR EVENTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 13.48.030 is amended to read as follows:

**13.48.030 Notice of unruly gathering--Posting, mail.**

A. Posting of Premises. When the City intervenes at a gathering which constitutes a public nuisance under this chapter, the premises at which such nuisance occurred shall be posted with a Nnotice substantially in the form attached hereto as Exhibit "A"\* stating that ~~the intervention of the City has been necessitated as a result of~~ a public nuisance under this chapter was caused by a gatheringn event at the premises, the date and time of the police intervention, and that any subsequent or second police intervention with respect to a nuisance under this chapter at said premises, event including a second intervention that same day or night, within a 120sixty- days period therefrom of the first intervention, ~~on the same premises, which necessitates City intervention,~~ shall result in the joint and several liability of any guests causing the public public nuisance, ~~or any~~ persons who ~~own or~~ are residents or in control of the property at which the public public nuisance occurred, ~~or persons~~ who sponsored the gatheringevent constituting the public-public nuisance, and owners of the premises as more fully set forth in Sections 13.48.040--13.48.060 below. The residents and persons in control of such property, ~~and the sponsors of the event,~~ shall be responsible for ensuring that such Nnotice is not removed or defaced and shall be liable for a civil penalty of \$100one hundred dollars in addition to any other penalties which may be due under this ~~chapter, section~~ if such Nnotice is removed or defaced, provided, however, that the residents of the premiseshouse or sponsor of the event, if present, shall be consulted as to the location in which such Nnotice is posted in order to achieve both the security of the Nnotice and its prominent display. The Notice shall remain posted for the entire 120-day period.

B. Mailing of Notice to Property Owner. Notice of the police intervention event shall also be mailed to any property owner at the address shown on the City's property tax assessment records and shall advise the property owner that any subsequent gathering resulting in a public nuisance event within 120 sixty days on the same premises necessitating City intervention shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth below.

13.48.030A Exhibit A.

**EXHIBIT A**  
**(Section 13.48.030A)**

IMPORTANT NOTICE REGARDING  
PUBLIC NUISANCE

NOTICE IS HEREBY GIVEN THAT, pursuant to Berkeley Municipal Code Chapter (BMC) 13.48, on:

Date: \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m./p.m.,

the Berkeley Police Department found that a gathering, party, or event at the below-listed premises caused a public nuisance as defined by BMC Chapter 13.48 (e.g. disturbance of the peace, threat to public safety, etc.):

Address: \_\_\_\_\_

**WARNING**

PURSUANT TO ORDINANCE NO. \_\_\_\_\_ N.S., AS A RESULT OF A PRIOR DISTURBANCE AT PREMISES, IF THE POLICE RESPOND TO ANOTHER DISTURBANCE CONSTITUTING A NUISANCE (AS DEFINED BY BMC CHAPTER 13.48) AT THE ABOVE PREMISES THE NEXT DISTURBANCE WITHIN 1280 DAYS OF THIS NOTICE, INCLUDING BUT NOT LIMITED TO A DISTURBANCE LATER TODAY OR TONIGHT, WILL RESULT IN CIVIL PENALTIES WILL BE IMPOSED UPON:

1. -ALL GUESTS CAUSING THE NUISANCE PARTICIPANTS AND
2. ALL SPONSORS OF THE GATHERING EVENT, AND
3. ALL RESIDENTS OF THE PREMISES
4. ALL PERSONS IN CONTROL OF THE PREMISES
5. ALL OWNERS OF THE PREMISES PROPERTY OWNERS OF THE PREMISES THAT RESIDE ON OR ADJACENT TO THE PREMISES, OR ARE PRESENT AT THE PREMISES WHEN THIS NOTICE IS FIRST POSTED.

Property owners who do not reside on or adjacent to the above premises, and who are not present when this Notice is first posted, are also jointly and severally liable for said civil penalty, if the next disturbance occurs after two weeks after this Notice is mailed to said owner.-

THIS NOTICE MUST REMAIN POSTED ON THE PREMISES FOR 120 DAYS  
\$100 FINE FOR UNAUTHORIZED REMOVAL OF THIS NOTICE

\_\_\_\_\_  
(Name and Signature of the Officer Issuing This Notice)

\_\_\_\_\_  
(Officer's Phone Number)

Date: \_\_\_\_\_

Case Number: \_\_\_\_\_

~~NOTICE IS HEREBY GIVEN THAT, pursuant to Ordinance No. \_\_\_\_\_ NS. On \_\_\_\_\_, 199\_\_\_\_, at \_\_\_\_\_ a.m./p.m., the Berkeley Police Department found that a public nuisance caused by a disturbance of the public peace and/or threat to public safety occurred at the premises located at~~

~~\_\_\_\_\_  
\_\_\_\_\_.~~

~~If there is a subsequent event on these premises which constitutes such a public nuisance and necessitates the intervention of the Police Department on or before, (count 60 days from the date of first police intervention) every participant in and sponsor of such event, and the owner of the premises, shall be jointly and severally liable for the civil penalties connected with this response as set forth in Ordinance No. \_\_\_\_\_ N.S.~~

\_\_\_\_\_  
\_\_\_\_\_  
(Signature of Officer issuing notice)

\_\_\_\_\_  
\_\_\_\_\_  
(Name of Officer)

\_\_\_\_\_  
\_\_\_\_\_  
(Title of Officer) \_\_\_\_\_ (Phone Number)

\_\_\_\_\_  
\_\_\_\_\_  
Date issued \_\_\_\_\_ 199\_\_\_\_; \_\_\_\_\_  
Case Number

Section 2. That Berkeley Municipal Code [Section](#) 13.48.040 is amended to read as follows:

**13.48.040 Persons liable for a subsequent response to a gathering constituting a public nuisance.**

If the City is required to ~~respond~~intervene as to a gathering constituting a public nuisance on the same premises more than once in any ~~120~~sixty-day period, including a second intervention during the same day or night as the first intervention, the following persons shall be jointly and severally liable for civil penalties as set forth in Sections 13.48.050 below, in addition to liability for any injuries to City personnel or damage to City property.

A. The person or persons who own the ~~premises~~ property where the gathering constituting a public nuisance took place if any of the following are the case: (1) said owner resides on or adjacent to the premises, (2) said owner was present when the Notice described in Exhibit A was first posted, or (3) the Notice described in Exhibit A was mailed to said owner and 14 days have elapsed since the date of said mailing. ~~-, provided that notice has been mailed to the owner of the property as set forth herein and the gathering occurs at least two weeks after the mailing of such notice.~~ For purposes of this subsection, where a gathering takes place within the confines of a single unit in a building owned by a housing cooperative, the owner of the property shall be deemed to be the owner of the single unit and not the members of the housing cooperative in general. Where the gathering took place in the common area of a building owned by a housing cooperative, only the members of the cooperative owning units in the building where the gathering took place shall be deemed the owners of the property for purposes of this subsection. Other members of the housing cooperative may still be liable if they fall within the categories of person made liable by Section 13.48.040, subsections B., C., or D., below.

B. The person or persons residing on or otherwise in control of the property where such gathering took place.

C. The person or persons who organized or sponsored such gathering.

D. All persons attending such gathering who engaged in any activity resulting in the public nuisance.

E. Nothing in this section shall be construed to impose liability on the resident or owners of the premises or sponsor of the gathering, for the conduct of persons who are present without the express or implied consent of the resident or sponsor, as long as the resident and sponsor have taken all steps reasonably necessary to exclude such uninvited participants from the premises. Where an invited guest engages in conduct which the sponsor or resident could not reasonably foresee and the conduct is an isolated instance of a guest at the event violating the law which the sponsor is unable to reasonably control without the intervention of the police, the unlawful conduct of the individual guest shall not be attributable to the sponsor, owner, or resident for the purposes of determining whether the event constitutes a public nuisance under this section.

F. There shall be no liability for civil penalties under this chapter for a subsequent intervention during the same day or night as the prior intervention, unless a reasonable time has been provided to abate the public nuisance, taking into account the size of the gathering, the time of day, and other relevant factors.

G. There shall be no liability for civil penalties under this chapter for a second response during the same day or night as the first response when a person who would otherwise be liable under subdivision (A) seeks assistance from the Police Department to abate a public nuisance under this Chapter, and the person cooperates fully with the police while taking reasonable action to abate the public nuisance.

H. If the City is required to intervene at a gathering constituting a public nuisance on the same premises more than once in any 120-day period, excluding a second intervention during the same day or night as the first intervention, the 120-day period shall be extended by another 120 days from the date of the second intervention.

Section 3. That Berkeley Municipal Code Section 13.48.050 is amended to read as follows:

**13.48.050 Schedule of civil penalties.**

A. Civil penalties shall be assessed against all persons liable for the City's intervention to abate a gathering constituting a public nuisance as follows:

1. For the second response in any ~~120-sixty~~-day period the penalty shall be the total sum of ~~\$750~~five hundred dollars.

2. For the third response in any ~~120-sixty~~-day period the penalty shall be the total sum of ~~\$1,500~~one thousand dollars.

3. For any further response in any ~~120-sixty~~-day period the penalty shall be the total sum of ~~\$2,500~~one thousand five hundred dollars for each such further response.

4. The penalties that are provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an event which is a public nuisance under this ordinance, provided however, that if the only violation of law which constituted the public nuisance under this chapter is excessive noise, the remedies provided under this chapter shall be exclusive of any other remedies provided by law to the City for such excessive noise.

B. The City shall bill all persons liable for the penalties by mail by sending a letter in substantially the form attached hereto as Exhibit "B".\* Payment of the penalties shall be due within thirty days of the date the bill is deposited in the mail. If full payment is not received within the required time for payment, the bill will be delinquent, and all persons liable for the penalties shall be charged interest at the maximum legal rate from the date the payment period expires and a further civil penalty in the amount of ~~\$100~~one hundred dollars. (Ord. 6182-NS § 5, 1993)

**Section 13.48.050B Exhibit B.**

**EXHIBIT B  
(Section 13.48.050B)**

Date:

To:

Dear:

The City of Berkeley was required to abate the public nuisance caused by a gathering of ~~10~~ten or more persons at (location of property) \_\_\_\_\_, which substantially disrupted the quiet enjoyment of property in a significant segment of the adjacent neighborhood. This is the (second/third/fourth, etc.) such public nuisance at this property within the last ~~120 sixty (60)~~ days, and thus, a penalty of \_\_\_\_\_ ~~\$750.00, \$1,500.00, etc.)~~ is imposed on you. If you fail to remit this fine to the City of Berkeley by \_\_\_\_\_ (30 days from the date of this notification~~later~~) you will be liable for an additional ~~\$100.00~~ penalty, plus interest. The payment should be remitted to the address listed below.

Your liability is based on the fact that you were:

An owner of the property to whom was sent prior notice of a public nuisance at the property within the previous ~~120~~60 days; and/or

An owner of the property who resided on or adjacent to the property when the public nuisance took place; and/or

An owner of the property who was present when a Notice of a public nuisance was first posted at the property; and/or

A person who resided ~~s~~ on or ~~was~~ otherwise in control of the property when ~~re~~ the public nuisance took place ~~there~~; and/or

A person who organized or sponsored the event that createding the public nuisance at such property; and/or

A person who attended the event constituting the public nuisance at such property and engaged in the conduct which resulted in the public nuisance.

If you believe that you are not liable you may defend this claim in the civil action which the City of Berkeley will file against you upon your failure to remit the penalty. You should be aware, however, that if you fail to prevail in that action you will be liable for the additional penalty of \$100~~0~~ and interest on the total penalties.

Sincerely yours,

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

**Section 4.** Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

## ORDINANCE NO. – N.S.

ADDING NEW CHAPTER 13.49 TO THE BERKELEY MUNICIPAL CODE  
RELATING TO PROHIBITIONS AGAINST CONSUMPTION OF ALCOHOLIC  
BEVERAGES BY MINORS AND ALLOWING OR HOSTING GATHERINGS  
WHERE MINORS ARE CONSUMING ALCOHOLIC BEVERAGES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.49 is hereby added to read as follows:

**Chapter 13.49 Social Host Ordinance**

**13.49.010 Findings and purposes.**

**13.49.020 Definitions.**

**13.49.030 Hosting, Permitting, Allowing a Party, Gathering, or Event Where Minors Consuming Alcoholic Beverages Prohibited.**

**13.49.040 Violation—Penalty.**

**13.49.010 Findings and purposes.**

A. The City Council finds as follows:

1. Unsupervised parties on private property where alcohol is consumed by minors are harmful to the minors themselves and to the communities where such parties are held.
2. Police ability to abate gatherings where alcohol is consumed by minors on private property will result in a decrease in abuse of alcohol by minors, physical altercations and injuries, neighborhood vandalism, and excessive noise disturbance thereby improving public safety.
3. Problems associated with such gatherings are difficult to resolve unless the Police Department has the legal authority to direct the host to disperse the group.
4. Control of large parties, gatherings or events on private property where minors are consuming alcohol is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public.
5. Police officers frequently have been required to make calls to a location of a party, gathering, or event in order to disperse uncooperative participants, causing a drain of manpower and resources and in some cases, leaving other areas of the City with inadequate police protection.
6. Alameda County respondents to a 2006 BHCS AOD Youth Survey, Berkeley High School youth uniformly had significantly higher rates of alcohol use in the past 30 days (58%) when compared to their county-wide high school cohorts (33% and 35%), and 30% of the Berkeley High School respondents claimed that obtaining alcohol was “easy.”
7. According to a 2004 Safer California Universities Study, 58.8% of UC Berkeley students consumed alcohol in the past 30 days, 49.8% of underage UC Berkeley students consumed alcohol in the past 30 days, 44.2% of UC Berkeley students who drank alcohol reported binge drinking in the previous two weeks, and 55.1% of UC Berkeley students surveyed thought it would be “very easy” to find an off-campus party if they wanted to drink alcohol.

B. The purpose of this Chapter is to address the problems identified above and protect the public health, safety and general welfare by enhancing the enforcement of laws prohibiting the

consumption of alcohol by minors and reducing the costs of providing police services to parties, gatherings, or events requiring a response, by requiring hosts to ensure minors are not consuming alcoholic beverages.

**13.49.020 Definitions.**

As used in this Chapter, the following words and phrases have the meanings set forth in this Section:

A. "Alcohol" shall have the same meaning as in Business & Professions Code section 23003 or any successor section.

B. "Alcoholic beverage" shall have the same meaning as in Business & Professions Code section 23004 or any successor section.

C. "Guardian" means: (1) a person who, under court order, is the guardian of the person of a Minor; or (2) a public or private agency with whom a Minor has been placed by the court.

D. "Minor" means any person under 21 years of age.

E. "Parent" means a person who is a natural parent, adoptive parent, or step-parent of another person.

F. "Gathering" means a group of persons who have assembled or are assembling for a social occasion or social activity.

G. "Premises" means any residence or other private property, individual unit or place, including any commercial or business premises.

H. "Public Place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities and shops.

**ALTERNATIVE 1: "KNOWS OR REASONABLE SHOULD KNOW"**

**13.49.030 Hosting, Permitting, Allowing a Gathering Where Minors Consuming Alcoholic Beverages Prohibited—Reasonable steps to prevent consumption—Self-reporting.**

A. 1. Except as permitted by state law, it is unlawful for any person to permit, allow, or host a Gathering at his or her place of residence or other private property, public place, or any other premises under his or her control where Alcoholic Beverages have been consumed by a Minor, if such person either knows or reasonably should know that a Minor has consumed an Alcoholic Beverage.

2. A person who permits, allows or hosts a Gathering shall be deemed to have actual or constructive knowledge that a Minor has consumed Alcoholic Beverages if the person has not taken all reasonable steps to prevent the consumption of Alcoholic Beverages by Minors as set forth in subdivision (D) below.

3. An person who permits, allows or hosts a Gathering shall be rebuttably presumed to have actual or constructive knowledge that Minors have consumed Alcoholic Beverages if such person is present at the premises of the Gathering at the time any Minor consumes an alcoholic Beverage.

B. This Section shall not apply if all Minors who are consuming an Alcoholic Beverage are being supervised by their Parents or Guardians.

C. This Section shall not apply to any location or place regulated by the California Department of Alcohol and Beverage Control.

D. It is the duty of any person who permits, allows or hosts a Gathering at his or her place of residence or other private property, public place, or any other premises under his or her control, where Minors will be present, to take all reasonable steps to prevent the consumption of

Alcoholic Beverages by any Minor at the Gathering. Reasonable steps are controlling access to Alcoholic Beverages at the Gathering, controlling the quantity of Alcoholic Beverages at the Gathering, verifying the age of persons attending the Gathering by inspecting drivers licenses or other government-issued identification cards to ensure that Minors do not consume Alcoholic Beverages at the Gathering, monitoring the activities of persons at the Gathering, and monitoring the conduct of Minors at the gathering.

E. A person who hosts a Gathering shall not be in violation of this Chapter if he or she seeks assistance from the Police Department or other law enforcement agency to remove any person who refuses to abide by the host's performance of the duties imposed by this Chapter, or terminate the Gathering because the host has been unable to prevent Minors from consuming Alcoholic Beverages despite having taken all reasonable steps to do so, as long as such request is made before any other person makes a complaint about the Gathering.

## **ALTERNATIVE 2: "PERMITS"**

### **13.49.030 Hosting, Permitting, Allowing a Gathering Where Minors Consuming Alcoholic Beverages Prohibited—Reasonable steps to prevent consumption—Self-reporting.**

A. Except as permitted by state law, it is unlawful for any person to permit, allow, or host a Gathering at his or her place of residence or other private property, public place, or any other premises under his or her control where Alcoholic Beverages have been consumed by a Minor.

B. This Section shall not apply if all Minors who are consuming an Alcoholic Beverage are being supervised by their Parents or Guardians.

C. This Section shall not apply to any location or place regulated by the California Department of Alcohol and Beverage Control.

D. It is the duty of any person who permits, allows or hosts a Gathering at his or her place of residence or other private property, public place, or any other premises under his or her control, where Minors will be present, to take all reasonable steps to prevent the consumption of Alcoholic Beverages by any Minor at the Gathering. Reasonable steps are controlling access to Alcoholic Beverages at the Gathering, controlling the quantity of Alcoholic Beverages at the Gathering, verifying the age of persons attending the Gathering by inspecting drivers licenses or other government-issued identification cards to ensure that Minors do not consume Alcoholic Beverages at the Gathering, monitoring the activities of persons at the Gathering, and monitoring the conduct of Minors at the gathering.

E. A person who hosts a Gathering shall not be in violation of this Chapter if he or she seeks assistance from the Police Department or other law enforcement agency to remove any person who refuses to abide by the host's performance of the duties imposed by this Chapter, or terminate the Gathering because the host has been unable to prevent Minors from consuming Alcoholic Beverages despite having taken all reasonable steps to do so, as long as such request is made before any other person makes a complaint about the Gathering.

### **13.49.040 Violation—Penalty.**

A. Violation of this Chapter is a misdemeanor punishable as set forth in Chapter 1.20 of this code, but may be charged, in the discretion of the citing officer, as an infraction. Violations of this Chapter shall not be charged as misdemeanors unless the citing officer observes egregious violations or aggravating circumstances.

B. Civil penalties under Chapter 1.28 shall be no less than \$250 for the first violation, and shall be increased for subsequent violations by the same person.

## ATTACHMENT 2

C. Nothing in this Chapter in any way limits any other remedy that may be available to the City, or any penalty that may be imposed by the City, including but not limited to, under Chapters 1.24, 1.28, 13.40, 13.46 and 13.48.

Section 2. If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Berkeley hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional.

Section 3. Copies of this Bill shall be posted for two days prior to adoption in the glass case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

