

**Carver County Board of Commissioners
October 16, 2007
County Board Room
Carver County Government Center
Human Services Building
Chaska, Minnesota**

County Board Work Session Agenda

| Time | Topic | Page |
|-------------|---|-------------|
| 4:00 p.m. | 1. ATTORNEY | |
| | 1.1 Proposed Carver County Social Host Ordinance..... | 1-11 |
| 5:00 p.m. | 2. PUBLIC WORKS | |
| | 2.1 Parks-current initiatives, funding | 12 |
| 6:00 p.m. | Board and Administrator Reports | |

David Hemze
County Administrator



REQUEST FOR BOARD ACTION

AGENDA ITEM : Proposed Carver County Social Host Ordinance No. 59-2007

Originating Division: Attorney

Meeting Date: October 16, 2007

Amount of Time Requested: 60 minutes

Attachments for packet: Yes No

Item Type: Consent Regular Session Closed Session Work Session Ditch/Rail Authority

BACKGROUND/EXPLANATION OF AGENDA ITEM:

After the Public Hearing on the Social Host Ordinance, the Board asked for further information and options for penalties (civil and criminal) including restorative options. In addition, concern was raised at the public hearing regarding the legal standard in the ordinance of "knows or reasonably should know" and whether that standard was too broad. Lastly, questions have been raised about whether the ordinance can be sunsetted (terminate on a specific date) and whether the ordinance can be drafted to apply to non-relative/non-family members.

Since the public hearing, an order was issued in Carver County District Court dismissing the grand jury indictment against Jesse Blunt. Mr. Blunt was indicted for Aiding and Abetting Providing Liquor to a Person Under the Age of 21 in the events surrounding the death of Sean Humphrey. Jesse Blunt was a co-resident of 1596 Millpond Court, the location of the underage drinking party.

Attached is a copy of the proposed ordinance, a memorandum outlining the issues discussed above, and Resolution 142-07 from the City of Carver indicating Carver's support for the Social Host Ordinance.

ACTION REQUESTED:

Discussion of the ordinance, responding to Board questions, and next steps.

FUNDING

County Dollars = \$0
Other Sources & Amounts = \$
TOTAL = \$0

FISCAL IMPACT

None
 Included in current budget
 Budget amendment requested
 Other: No immediate fiscal impact. Ordinance may result in more citations being issued and prosecuted. No additional staff is necessary or anticipated. Fine revenue may increase.

Related Financial Comments:

Reviewed by Division Director

James W. Kellogg
Date: 10/11/07

ORDINANCE NO. 59-2007

CARVER COUNTY, STATE OF MINNESOTA

SOCIAL HOST ORDINANCE

This ordinance prohibits, and establishes penalties for, any person hosting an event or gathering where alcohol is present and being possessed or consumed by persons under twenty-one (21) years of age.

Be it enacted by the Board of Commissioners of Carver County, State of Minnesota, as follows:

Subd. 1. Purpose and Findings. The Board of Commissioners of Carver County intends to discourage underage possession and consumption of alcohol, even if done within the confines of a private residence, and intends to hold persons criminally responsible who host events or gatherings where persons under 21 years of age possess or consume alcohol regardless of whether the person hosting the event or gathering supplied the alcohol. The Board of Commissioners of Carver County finds that:

- (a) Events and gatherings held on private or public property where alcohol is possessed or consumed by persons under the age of twenty-one are harmful to those persons and constitute a potential threat to public health requiring prevention or abatement.
- (b) Prohibiting underage consumption acts to protect underage persons, as well as the general public, from injuries related to alcohol consumption, such as alcohol overdose or alcohol-related traffic collisions.
- (c) Alcohol is an addictive drug which, if used irresponsibly, could have drastic effects on those who use it as well as those who are affected by the actions of an irresponsible user.
- (d) Often, events or gatherings involving underage possession and consumption occur outside the presence of parents. However, there are times when the parent(s) is/are present and, condone the activity, and in some circumstances provide the alcohol.
- (e) Even though giving or furnishing alcohol to an underage person is a crime, it is difficult to prove, and an ordinance is necessary to help further combat underage consumption.
- (f) A deterrent effect will be created by holding a person criminally responsible for hosting an event or gathering where underage possession or consumption occurs.

Subd. 2. Authority. This ordinance is enacted pursuant to Minn. Stat. §145A.05 subdivision 1.

Subd. 3. Definitions. For purposes of this ordinance, the following terms have the following meanings:

- (a) Alcohol. "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin, or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.
- (b) Alcoholic beverage. "Alcoholic beverage" means alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- (c) Event or gathering. "Event or gathering" means any group of three or more persons who have assembled or gathered together for a social occasion or other activity.
- (d) Host. "Host" means to aid, conduct, allow, entertain, organize, supervise, control, or permit a gathering or event.
- (e) Parent. "Parent" means any person having legal custody of a juvenile:
 - (1) As natural, adoptive parent, or step-parent;
 - (2) As a legal guardian; or
 - (3) As a person to whom legal custody has been given by order of the court.
- (f) Person. "Person" means any individual, partnership, co-partnership, corporation, or any association of one or more individuals.
- (g) Residence or Premises. "Residence" or "premises" means any home, yard, farm, field, land, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, park, or any other place of assembly, public or private, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented, or used with or without permission or compensation.
- (h) Underage Person. "Underage person" is any individual under twenty-one (21) years of age.

Subd. 4. Prohibited Acts.

- (a) It is unlawful for any person(s) to:
 - (1) host or allow an event or gathering;
 - (2) at any residence, premises, or on any other private or public property;
 - (3) where alcohol or alcoholic beverages are present;
 - (4) when the person knows or reasonably should know that an underage person will or does
 - (i) consume any alcohol or alcoholic beverage; or

- (ii) possess any alcohol or alcoholic beverage with the intent to consume it; and
- (5) the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).

(b) A person is criminally responsible for violating Subdivision 4(a) above if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures another to commit the prohibited act.

(c) A person who hosts an event or gathering does not have to be present at the event or gathering to be criminally responsible.

Subd. 5. Exceptions.

(a) This ordinance does not apply to conduct solely between an underage person and his or her parents while present in the parent's household.

(b) This ordinance does not apply to legally protected religious observances.

(c) This ordinance does not apply to retail intoxicating liquor or 3.2 percent malt liquor licensees, municipal liquor stores, or bottle club permit holders who are regulated by Minn. Stat. §340A.503 Subd.1(a)(1).

(d) This ordinance does not apply to situations where underage persons are lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment.

Subd. 6. Enforcement. This ordinance can be enforced by any police officer or sheriff's deputy in the county.

Subd 7. Severability. If any section, subsection, sentence, clause, phrase, word, or other portion of this ordinance is, for any reason, held to be unconstitutional or invalid, in whole, or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

Subd. 8. Penalty. Violation of Subdivision 4 is a misdemeanor.

Subd. 9. Effective Date. This ordinance shall take effect thirty (30) days following its final passage and adoption.



JAMES W. KEELER, JR.
CARVER COUNTY ATTORNEY
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Criminal Division
Peter Ivy, Head
Martha E. Mattheis
Michael D. Wentzell
Carol J. Mayer
Mary E. Shimshak
Mark Metz
Mark Debban, Paralegal

Law Office Administrator
Jane Wareham

Civil Division
Thomas W. Haines
Jennifer L. Stanfield
Patrick Conness
Patricia May, Paralegal

Victim Witness Coordinator
Nancy E.M. Yates

Juvenile Division
Janet L. Barke Cain, Head
Kevin G. Cedergren
Jennifer Casanova

October 10, 2007

Dear Commissioners:

At the public hearing on the Social Host Ordinance, the Sheriff and I were asked to look into the possibility of alternative penalties including restorative conferencing and civil penalties. In addition, concern was raised at the public hearing regarding the standard of "knows or reasonably should know" in the ordinance.

Since the public hearing, both the City of Chaska and Kandiyohi County have passed Social Host Ordinances. On October 1, 2007 the City of Carver passed a resolution indicating their belief that passing the Social Host Ordinance would serve the best interests of the City of Carver and the County of Carver and encouraged the Carver County Board of Commissioners to adopt Ordinance 59-2007.

Commissioner Maluchnik has requested that we look at whether the ordinance can be limited to non-relatives/non-family members and whether the Ordinance can be sunsetted (terminate on a specific date).

On September 26, 2007, Judge Jean A. Davies dismissed all charges in State of Minnesota v. Jesse Blunt. Jesse Blunt was previously indicted by a grand jury for Aiding and Abetting Providing Liquor to a Person Under the Age of 21 in the events surrounding the death of Sean Humphrey in Chaska, Minnesota. Jesse Blunt is a co-resident of 1596 Millpond Court in Chaska, the location of the party where the underage drinking occurred.

A. Restorative Conferencing

The Carver County Sheriff's Office has one part time restorative conferencing coordinator who facilitates the juvenile program. Currently, there is no restorative conferencing program for adults. Restorative conferencing can be a very powerful tool to resolve a case, especially when victims are involved. Restorative conferencing allows the victim to state how he or she has been impacted by the crime and the offender has an opportunity to explain the circumstances of the crime. Generally, a restorative conference is a time intensive process (contacting all individuals to see if they would like

to participate, set up a date and time for the conference, prepare for the conference, facilitate the conference, develop a contract/agreement, and then document the events). Restorative conferencing is particularly well suited for crimes involving victims. While restorative conferencing would be possible and could be tailored to fit a social host ordinance situation, it is better suited for a situation where there is a "clear" victim. There are certainly circumstances where there is a "clear" victim in a social host situation like in the Sean Humphrey case. However, social host ordinance situations generally may not have a "clear" victim that is injured as a result of the host's actions.

In addition, in order to consider restorative conferencing as a viable resolution to social host violations, the Sheriff's Office would need to expand the program to include adults and to expand the program to include alcohol related offenses. Currently our restorative program does not conference alcohol related offenses (consumption, possession, furnishing, DWI, etc.).

At this time, the Sheriff's Office and the Carver County Attorney's Office does not believe that it is fiscally viable to expand our conferencing program to include adults and a whole additional category of offenses. As noted below, we are not aware of any other social host ordinance or statute that uses mediation or restorative conferencing.

B. Civil and Criminal Penalties

In reviewing social host ordinances and statutes throughout the country, we have found that there are a variety of penalties imposed. Generally, the three categories of liability are: social host criminal liability, social host civil liability (private civil lawsuit), and civil recovery of response costs. Recovery of response costs is reimbursement to the local law enforcement agency for the cost of responding to the incident. We have not come across any ordinances or statutes that use mediation or restorative conferencing as an option. It is important to note that Minnesota currently has a social host law that imposes civil liability (Minn. Stat. §340A.90).

In reviewing the ordinances and statutes, there is a range of options. Some ordinances and statutes treat the offense as an infraction which is known as a petty misdemeanor offense in Minnesota. Most commonly the offense is treated as a misdemeanor. Connecticut law provides that a second offense is the equivalent of a gross misdemeanor (fines and up to one year in jail). Rhode Island punishes a first offense with a fine and up to six months in jail and the third offense as a felony.

Many of the California ordinances impose a combination of fines and recovery costs. Jail time is possible if there is an injury. For example, Ventura County treats the first violation as punishable by a \$250 fine and a warning that future violations will result in the recovery of response costs. The second violation is punishable by a \$500 fine and recovery of response costs and a third violation is punishable by a \$1000 fine and recovery of response costs. In the City of Thousand Oaks, California, the response cost for the first offense is \$2500, \$3500 for a second offense, and \$5000 for a third offense.

If the gathering is hosted by a juvenile then community work service is imposed instead of response costs (60 hours first offense, 80 hours second offense, and 100 hours for a third offense) in addition to the fine. In Imperial County, the host is liable for all costs of providing enforcement services including reasonable attorney's fees in the event of litigation.

The Social Host.Org website looked at the California Cities and Counties with Social Host Ordinances as of December 31, 2006. Of the 29 cities and counties listed, 3 treated the violation as an infraction for the first offense (but a misdemeanor for subsequent offenses), 12 treated the violation as a civil recovery for response costs only, 8 treated the violation as a misdemeanor only (no civil response costs), and 9 treated the offense as both a misdemeanor and civil recovery of response costs.

C. "Knowingly" or "Reasonably Should Know"

Currently, the Social Host Ordinance is drafted to impose criminal liability if the host "knows or reasonably should know" that an underage person is consuming an alcoholic beverage or possessing an alcoholic beverage with the intent to consume it. This phrase "knows or reasonably should know" requires the prosecution to prove beyond a reasonable doubt that the social host had or should have had knowledge that an underage person consumed or possessed alcohol at the event. "Knows or reasonably should know" is a principle recognized by common law negligence.

Black's Law Dictionary defines "knowing" as "having or showing awareness or understanding." "Knowing" can be construed to be direct and clear knowledge whereas "constructive knowledge" is knowledge that one using reasonable care or diligence should have.

Minnesota imposes civil liability for a social host who has "control over the premises and, being in a reasonable position to prevent the consumption of alcoholic beverages by that person, *knowingly or recklessly* permitted that consumption and the consumption caused the intoxication of that person." Minn. Stat. §340A.90.

Besides social host civil liability, the Minnesota legislature has applied constructive knowledge in other alcohol related contexts. In the case of forfeiture of a vehicle in the context of a DWI or drug related offense, the legislature uses the language "if its owner knew or should have known of the unlawful use or intended use." Also the Minnesota legislature will not impose civil liability on the driver of a vehicle if the passenger was injured and the passenger "knows or should have known" that the driver consumed alcoholic beverages which may have impaired the driver's ability to drive.

Specifically, Minnesota has adopted the language of "knowing or having reason to know" in at least twenty criminal statutes ranging from theft to prostitution (motor vehicle insurance, adulteration, interception of wire or oral communications, prohibited conduct with anhydrous ammonia, failure to produce rental or lease agreement, receiving stolen

property, false information to a financial institution, possession of counterfeit checks, mail theft, counterfeiting of currency, civil disorder, interference with privacy, interference with emergency communications, counterfeited intellectual property, criminal sexual conduct in the fifth degree, carrying weapons without a permit, violation of reporting a weapons transfer, and providing a false statement on a weapons permit). It should be noted that many of these statutes are gross misdemeanor and felony level offenses.

The Board has the option of choosing the language of "knows" which specifically requires proof of knowledge in order for there to be a violation or the standard "knowing or having reason to know" which is commonly used throughout Minnesota Statutes. The reason that the second option is recommended is that we do not want a situation where a host claims that they did not know that there were underage people drinking when it is clear from the facts of the case that a reasonable person would know that underage drinking occurred (eg. where eight individuals with 2008 Waconia High School letter jackets are drinking beer on the property-the host knew or should have known that underage drinking was occurring but could legitimately argue that they did not have specific knowledge of the age of the individuals). It should also be noted that of the 29 California ordinances, only 7 of the 29 required proof of knowledge.

D. Sunsetting the Ordinance and Limiting the Ordinance to Non-Relative/Non-Family Members

Putting a termination date on the ordinance (eg. "This Ordinance shall be effective from November 1, 2007 through November 1, 2008") and limiting the ordinance to non-relative/non-family members is a legal option the Board could explore and ultimately adopt. The issue is whether it is an advisable option.

Citizens are entitled to know and be certain of the laws. By sunsetting an ordinance or "piloting" an ordinance, citizens may not necessarily be aware of what conduct is legal and what conduct is not legal. Citizens generally assume that once an ordinance or statute is passed it is effective until it is repealed. I am not aware of situations where ordinances or statutes dealing with public policy issues are piloted to determine the advisability/workability of keeping such a statute or an ordinance. The preferable method would be to pass the ordinance and if at a later date and time the Board felt that the ordinance did not achieve the goals desired, than the Board would consider repealing the Ordinance. This method provides the most certainty for citizens and does not give the public the impression that the Board is experimenting with social policy.

Limiting the ordinance to non-relative/non-family members is problematic for a number of reasons. A situation could arise where a parent is out of town and places an adult niece or nephew in charge of their home and their children. That adult niece/nephew hosts an underage drinking party in their relative's home without permission. The relative then wishes for the niece/nephew to be charged and it is not possible under the ordinance. If in the fact scenario above, the parent instead puts an adult neighbor in

charge of their home and their children (instead of an adult niece or nephew) while they are out of town, and the neighbor hosts an underage drinking party in their home without permission, the neighbor could be charged. This raises enforcement issues, public policy issues, and also issues of fairness which potentially rise to the level of constitutional equal protection claims depending on whether the state can provide a legitimate basis for treating these two classes of individuals differently under the law.

Similarly, if a juvenile co-hosted an underage drinking party with a friend at the juvenile's home (without permission and while the juvenile's parents are out of town) the juvenile could not be charged under the law but the friend could. Again, issues of public policy, fairness and equal protection are of concern.

E. State Social Host Ordinance

At this time the Minnesota County Attorney's Association (MCAA) Board of Directors is considering whether to move forward with proposing a state-wide social host ordinance. Part of the difficulty with this proposal is the legislative agenda for the year is in its final stages and it is uncertain at this time whether MCAA will take this issue on this year given all of the other high priority legislative issues before it. In any event, the earliest date that a statute would likely go into effect is August 1, 2008.

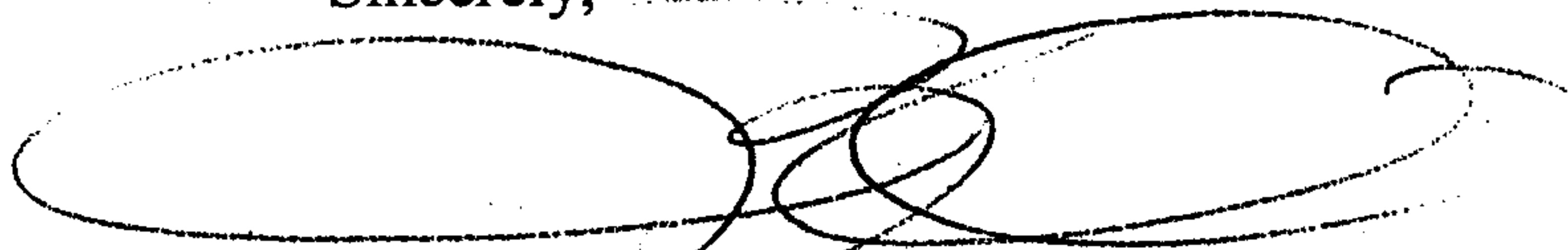
F. Jesse Blunt Case

The Jesse Blunt case is an example of the hole that currently exists in our law. Jesse Blunt was one of the residents who hosted the underage drinking party where Sean Humphrey consumed alcohol prior to his death. A grand jury indicted Jesse Blunt on felony charges of aiding and abetting procurement of alcohol when death or great bodily harm occurs. The defense requested that the indictment against Jesse Blunt be dismissed for lack of probable cause. On September 26, 2007, Judge Jean A. Davies dismissed the grand jury indictment.

I hope this adequately summarizes the issues for discussion on October 16, 2007. Please do not hesitate to contact me if you have any questions or concerns.

Thank you for your time and opportunity for input.

Sincerely,



Janet L. Barke-Cain
Assistant Carver County Attorney

**CITY OF CARVER
RESOLUTION 142-07**

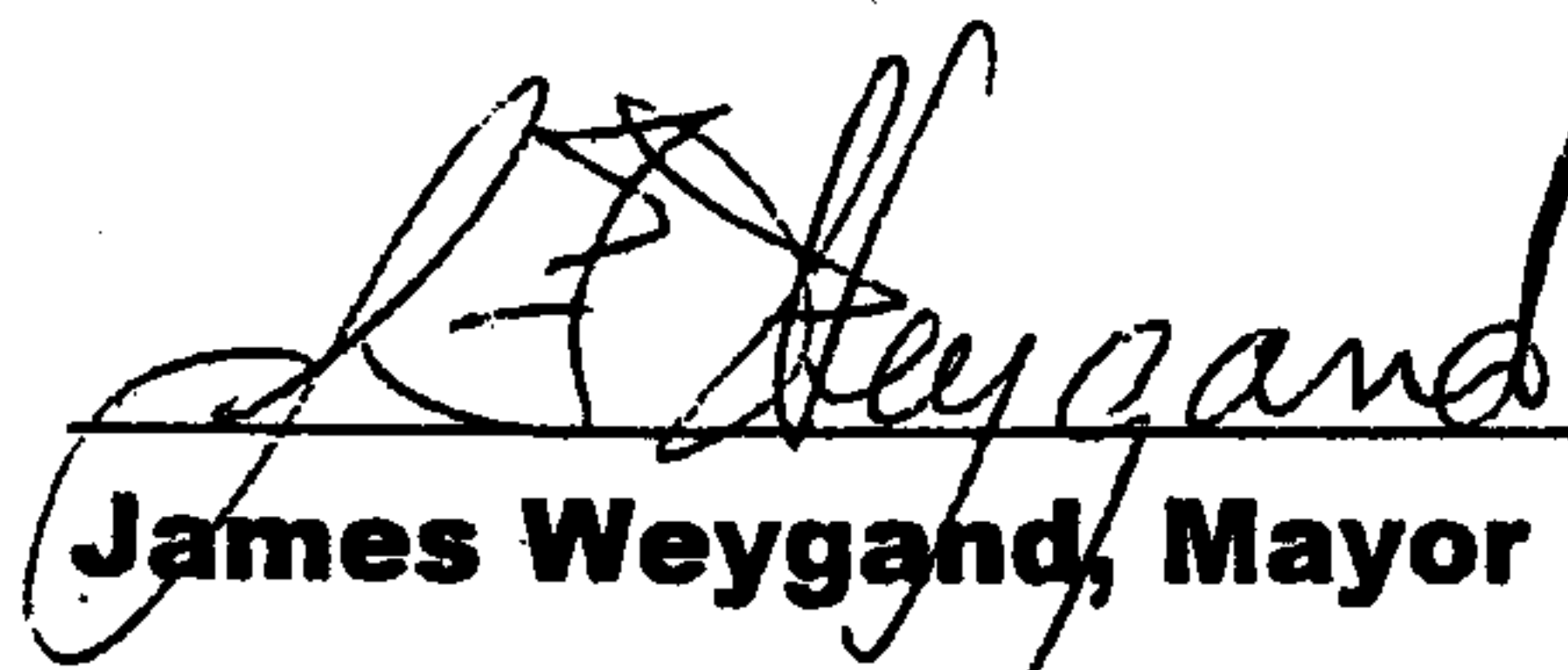
CARVER COUNTY SOCIAL HOST ORDINANCE

WHEREAS, the City of Carver has reviewed the draft Carver County titled Social Host Ordinance No. 59-2007 prohibiting and establishing penalties for any person hosting an event or gathering where alcohol is present and being possessed or consumed by persons under twenty-one years of age.

WHEREAS, the city council of City of Carver believes this said ordinance would serve in the best interest of the residents of the City of Carver and Carver County.

NOW, THEREFORE, BE IT RESOLVED the City of Carver encourages the Carver County Board of Commissioners to approve Ordinance 59-2007.

Adopted by the Council of the City of Carver this 1st day of October, 2007.



James Weygand, Mayor

ATTEST:



Patricia Plekkenpol, City Clerk



REQUEST FOR BOARD ACTION

AGENDA ITEM : Public Works Topics

Originating Division: Public Works Meeting Date: October 16, 2007
 Amount of Time Requested: 60 minutes Attachments for packet: Yes No
 Item Type: Consent Regular Session Closed Session Work Session Ditch/Rail Authority

BACKGROUND/EXPLANATION OF AGENDA ITEM:

❖ **Parks**

40 Minutes

- Current Initiatives
 - Lake Minnewashta Park
 - Lake Waconia Park
 - Baylor Park
 - Dakota Rail
 - Mittelstaedt Parcel
 - Comprehensive Plan

20 Minutes

- Funding
 - Current Model
 - Needs
 - Strategies

ACTION REQUESTED:

No action is requested.

FUNDING

County Dollars = \$
 Other Sources & Amounts = \$
 = \$
TOTAL = \$

FISCAL IMPACT

- None
- Included in current budget
- Budget amendment requested
- Other:

Related Financial Comments:

Reviewed by Division Director RMG Date: September 18, 2007