

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

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, REPEALING CHAPTER 9.12 (MINOR ALCOHOL OFFENSES) OF THE NAPA COUNTY CODE, AND ADDING A NEW CHAPTER 9.12 ENTITLED THE SOCIAL HOST ACCOUNTABILITY ORDINANCE INCLUDING IMPOSITION OF CIVIL FINES AND ABATEMENT COSTS**

**WHEREAS**, Napa County, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety and general welfare of its residents; and

**WHEREAS**, the occurrence of loud or unruly gatherings on private property is a threat to the public health, safety, or quiet enjoyment of residential property and the general welfare; and

**WHEREAS**, Section 25658 of the State of California Business and Professions Code makes it unlawful for a person under the age of twenty-one (21) years to purchase or attempt to purchase, or consume alcoholic beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under the age of twenty-one (21) years.

**WHEREAS**, according to the Napa County Sheriff's Department, in 2009 Sheriff's Deputies responded to 150 calls for service due to complaints for loud and unruly gatherings; of these responses 17 were a second response to the same property within a six month period and 8 were a third response to the same property within a six month period; and

**WHEREAS**, law enforcement response to loud and unruly gatherings causes a drain of law enforcement resources and in some cases, leaves other areas of the County with inadequate law enforcement protection. Responses to such gatherings result in a disproportionate expenditure of public safety resources, which are underwritten by general taxes paid to the county by its taxpayers and residents; and

**WHEREAS**, according to the California Healthy Kids Survey (2008), 30% of Napa County 11<sup>th</sup> graders report obtaining alcohol at parties or other events outside school and 78% of Napa County 11<sup>th</sup> graders report that alcohol is fairly easy or very easy to obtain. Alcohol policy research regarding underage drinking shows that when communities reduce youth access to alcohol, communities experience reductions in youth alcohol use and related problems. Ordinances that reduce youth access to alcohol from social sources have been recognized as a best practice by the United States Department of Justice; and

**WHEREAS**, communities that have adopted such ordinances have seen reductions in the size of gatherings; reductions in youth perception of ease of access to alcohol and reductions in repeat calls for service for loud and unruly gatherings; and

**WHEREAS**, the ability of law enforcement to abate gatherings where alcohol is consumed by minors on private property will help to decrease in abuse of alcohol by minors, physical

altercations and injuries, sexual assaults, truancy, driving under the influence of alcohol, adolescent crime, motor vehicle crashes, neighborhood vandalism and excessive noise disturbance thereby improving public safety and overall quality of life of Napa County residents; and

**WHEREAS**, persons held responsible for abetting or allowing loud or unruly gatherings will be more likely to properly supervise or to stop such conduct at gatherings held on property in their possession or under their control; and

**WHEREAS**, problems associated with loud or unruly gatherings at which alcoholic beverages are served to, consumed by or in the possession of underage persons are difficult to prevent or deter unless law enforcement has the additional legal authority to issue a civil citation for a civil fine and/or a civil citation for the cost of public safety response; and

**WHEREAS**, the intent of this chapter is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. Persons who actively or passively aid, abet, or allow loud or unruly gatherings shall be held liable for the nuisances created by such gatherings by the imposition of civil fine(s) for such violations and/or the costs associated with responding to such gatherings,

The Board of Supervisors of the County of Napa, State of California, ordains as follows:

**SECTION 1.** Chapter 9.12 (Minor Alcohol Offense) is hereby repealed.

**SECTION 2.** A new Chapter 9.12 (Social Host Accountability Ordinance) is hereby added to the Napa County Code to read in full as follows:

## **Chapter 9.12**

### **SOCIAL HOST ACCOUNTABILITY ORDINANCE**

#### **Sections:**

- |                 |   |
|-----------------|---|
| <b>9.12.010</b> | <b>Title.</b>   |
| <b>9.12.020</b> | <b>Legislative purpose.</b>   |
| <b>9.12.030</b> | <b>Legislative findings.</b>  |
| <b>9.12.040</b> | <b>Definitions.</b>   |
| <b>9.12.050</b> | <b>Prohibition of loud or unruly gatherings.</b>  |
| <b>9.12.060</b> | <b>Protected activities.</b>  |
| <b>9.12.070</b> | <b>Violation(s)--Civil fine(s).</b>   |
| <b>9.12.080</b> | <b>Imposition of civil cost recovery fee for public safety responses.</b>   |
| <b>9.12.090</b> | <b>Hearings on the imposition of civil fine and/or imposition of civil cost recovery fee for public safety response--Appeals.</b> |
| <b>9.12.100</b> | <b>Billing and civil fine and civil cost recovery fee for public safety responses--Debt to county--Enforcement.</b>               |
| <b>9.12.110</b> | <b>Remedies cumulative-Actions-Relationship to other laws.</b>  |

**9.12.010 Title.**

This chapter shall be known as the “Social Host Accountability Ordinance.”

**9.12.020 Legislative purpose.**

The purposes of this chapter are to:

- A. Protect the public health, safety and general welfare;
- B. Promote the reduction of underage drinking by imposing a civil fine on persons responsible for loud or unruly gatherings where alcohol is consumed by, served to or in the possession of underage persons;
- C. Facilitate the enforcement of laws prohibiting the service to, consumption of or possession of alcoholic beverages by underage persons; and
- D. To offset the county’s costs associated with providing fire, police, and other emergency services to loud or unruly gatherings, by imposing a civil fee upon social hosts and/or landowners who allow such loud or unruly gatherings to occur on their premises, at their residences, or at rented facilities.

**9.12.030 Legislative findings.**

The Napa County Board of Supervisors finds as follows:

- A. Napa County, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety and general welfare of its residents;
- B. The occurrence of loud or unruly gatherings on private property is a threat to the public health, safety, or quiet enjoyment of residential property and the general welfare;
- C. Section 25658 of the Business and Professions Code makes it unlawful for a person under the age of twenty-one years to purchase or attempt to purchase, or consume alcoholic beverages and makes it unlawful for any person to sell any alcoholic beverage to any person under the age of twenty-one years.
- D. According to the Napa County Sheriff’s Department, in 2009 Sheriff Deputies responded to one hundred fifty calls for service due to complaints for loud and unruly gatherings; of these responses seventeen were a second response to the same property within a six month period and eight were a third response to the same property within a six month period;
- E. Law enforcement response to loud and unruly gatherings causes a drain of law enforcement resources and in some situations, leaves other areas of the County with inadequate law enforcement protection. Responses to such gatherings result in a disproportionate expenditure of public safety resources, which are underwritten by general municipal taxes paid to the county by its taxpayers and residents.
- F. According to the California Healthy Kids Survey (2008), thirty percent of Napa County 11th graders report obtaining alcohol at parties or other events outside school, and seventy-eight percent of Napa County 11th graders report that alcohol is fairly easy or very easy to obtain. Alcohol policy research regarding underage drinking shows that when communities reduce youth access to alcohol, communities experience reductions in youth alcohol use and related problems. Ordinances that reduce youth access to alcohol from social sources have been recognized as a best practice by the United States Department of Justice.
- G. Communities that have adopted such ordinances have seen reductions in the size of gatherings; reductions in youth perception of ease of access to alcohol; and reductions in repeat calls for service for loud and unruly gatherings;
- H. Law enforcement ability to abate gatherings where alcohol is consumed by minors on private property will result in decrease in abuse of alcohol by minors, physical altercations and

injuries, sexual assaults, truancy, driving under the influence of alcohol, adolescent crime, motor vehicle crashes, neighborhood vandalism and excessive noise disturbance thereby improving public safety and overall quality of life of Napa County residents

I. Persons held responsible for abetting or allowing loud or unruly gatherings will be more likely to properly supervise or to stop such conduct at gatherings held on property in their possession or under their control;

J. Problems associated with loud or unruly gatherings at which alcoholic beverages are served to, consumed by or in the possession of underage persons are difficult to prevent or deter unless law enforcement has the additional legal authority to issue a civil citation for a civil fine and/or a civil citation for the cost of public safety response;

K. The intent of this chapter is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. Persons who actively or passively aid, abet, or allow loud or unruly gatherings shall be held liable for the nuisances created by such gatherings by the imposition of the civil fine(s) for such violations and/or the costs associated with responding to such gatherings.

#### **9.12.040 Definitions.**

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

“Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

“Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, liquor, 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.

“Juvenile” means any person less than eighteen years of age.

“Loud or unruly gathering” means a party or gathering of two or more persons at a residence or on other private property or rented public property upon which loud or unruly conduct occurs. Such loud or unruly conduct constitutes a public nuisance and includes but is not limited to:

1. Excessive noise; making, continuing, maintaining or causing to be made or continued, any excessive, unnecessary, unreasonable or unusually loud noise in such a manner as to disturb the quiet and repose of the residents of nearby properties so as to interfere with the comfortable enjoyment of life and property;

2. Excessive traffic;

3. Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;

4. Public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;

5. Service to or consumption of alcohol or alcoholic beverages by any underage persons;

6. Assaults, batteries, fights, domestic violence or other disturbances of the peace;

7. Vandalism;

8. Litter; or

9. Any other conduct which constitutes a threat to the public health, safety, or quiet enjoyment of residential property or the general welfare.

“Minor” means any person less than twenty-one years of age.

“Other private property” refers to hotel or motel room; an assembly hall or meeting room; a common room of a dwelling unit used for a party (e.g., recreation room of an apartment building); a site in a privately owned campground; privately owned vacant lot; privately owned agricultural

land; or privately owned rural land whether occupied as a dwelling, part or other social function, and whether owned, leased, rented or used without compensation.

“Person responsible for the event” means and includes, but is not limited to:

1. The person who owns, rents, leases or otherwise has control of the premises where the gathering occurs; and/or
2. The person in charge of the premises; and/or
3. The person who organized the event. If the person responsible for the event is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the civil fine and/or for the costs incurred for public safety services pursuant to this chapter.

“Public safety services” and/or “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. The portion of the cost of 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 loud or unruly gathering(s), 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; and
3. The cost of the use of any equipment or property, and the cost of repairing any equipment or property damaged, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

“Residence” includes a dwelling unit such as a home, condominium or apartment; structures on the residence other than the dwelling unit such as a garage, studio, tent, boat dock, swimming pool, barn or boat house; land on the residence whether improved or unimproved such as a yard, patio, open fields, piers or lake shores; water bodies on the residence such as a pond, lake, river or stream; a motor vehicle, camper or trailer located on the residence or a boat, watercraft, or other marine vessel located on the residence whether occupied on a temporary or permanent basis, whether occupied as a dwelling or for a party or gathering, and whether owned, leased, rented, or used with or without compensation.

“Underage person” means any person less than twenty-one years of age and shall have the same meaning as “minor,” defined above.

#### **9.12.050 Prohibition of loud or unruly gatherings.**

No person shall suffer, permit or host a gathering at his or her place of residence or other private property, place or premises or host a gathering of two or more persons at a public place under his or her control where the gathering is loud or unruly.

#### **9.12.060 Protected activities.**

This ordinance shall not apply to activities protected by Article 1, Section 4, of the California Constitution; the California Alcohol Beverage Control Act; or the First or Fourteenth Amendments to the United States Constitution,

#### **9.12.070 Violation(s)--Civil fine(s).**

It shall be a civil violation for a person to conduct or allow a loud or unruly gathering where alcohol is served to, consumed by or in the possession of an underage person on premises owned by the person responsible for the event, on premises rented by or to the person responsible for the

event, on premises where the person responsible for the event resides or on premises where the person responsible for the event is in control of such premises during the event. Law enforcement personnel, at his or her discretion, may immediately issue a citation for this civil violation upon evidence of the violation. There is no requirement of a first warning in order for law enforcement to issue this civil citation.

A. Civil fine: A first violation of this section shall result in a citation with a five hundred fifty dollar fine. A second violation shall result in a citation with a seven hundred and fifty dollar fine. A third or subsequent violation shall result in a citation with a one thousand dollar fine.

B. Law enforcement shall give notice of a violation of this section by issuing a citation to any and all responsible persons identified by law enforcement within thirty days of the violation. The citation shall also give notice of the right to request an administrative hearing to challenge the validity of the citation and the time for requesting that hearing.

C. The civil fine prescribed in this section is in addition to any civil cost recovery fee for public safety responses that may be assessed pursuant to Section 9.12.080.

D. In the event that the responsible person who is in violation of this section is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the civil violation.

#### **9.12.080 Imposition of civil cost recovery fee for public safety responses.**

In addition to any civil fine imposed for violation of this section, when any loud or unruly gathering occurs on private property whether or not alcohol is served to, consumed by or in the possession of underage person(s) and a public safety officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, the public safety officer shall give to the person(s) responsible for the event warning that a second or follow up violation of this section on the same date or within six months of the date of the warning shall result in his/her/their liability for the cost of providing public safety services (i.e., fire, ambulance, sheriff, and other emergency providers). The requirement of a first warning does not limit the ability of public safety personnel to issue a civil citation for the imposition of civil penalties for cost recovery on the same day that the warning is given if the warning does not end the loud or unruly gathering. The cost recovery for public safety responses shall be separate and distinct from a citation and fine for a civil violation described in Section 9.12.070.

A. The amount of cost recovery under this subsection shall be the response costs.

B. In the event that the responsible person who is in violation of this section is a juvenile, then the juvenile and the parents or guardians of that juvenile will be jointly and severally liable for the imposition of civil penalties for the cost of providing public safety services.

C. If there is more than one responsible person for the event then each responsible person shall be jointly and severally liable for the civil fine and/or for the costs incurred for public safety services pursuant to this chapter.

D. Civil cost recovery fee(s) shall not be imposed for the medical response costs in those situations where those present at the gathering call for emergency services for an actual emergency at the premises.

#### **9.12.090 Hearings on the imposition of civil fine and/or imposition of civil cost recovery fee for public safety response--Appeals.**

A. Administrative Hearing. Any person subject to a civil fine pursuant to Section 9.12.070 or subject to a civil cost recovery fee for public safety responses pursuant to Section 9.12.080 shall have the right to request an administrative hearing within forty-five days of the issuance of a citation for a civil violation. To request such a hearing, the person requesting the

hearing shall notify the clerk of the board in writing within forty-five days of the issuance of the citation.

B. The county hearing officer is delegated the power and duty to hear any appeal hearing under Section 9.12.090. The county hearing officer shall conduct a hearing on the matter within ninety days of the request for the hearing unless one of the parties requests a continuance for good cause. The county hearing officer shall render a decision within thirty days of the conclusion of the hearing. Any aggrieved person may obtain review of the decision by filing a petition for review with the Superior Court of California, county of Napa, a unified court, in accordance with the timelines and provisions set forth in Government Code Section 53069.4.

**9.12.100 Billing and civil fine and civil cost recovery fee for public safety responses--Debt to county--Enforcement.**

A. The amount of a civil fine and/or civil cost recovery fee for public safety responses shall be deemed a debt owed to Napa County by the person responsible for the event, and, if that person is a juvenile, then also his/her parents or guardians. Any person owing such fine and/or fees shall be liable in an action brought in the name of the county for recovery of such fine and/or fees. These recovery costs may include reasonable attorney fees incurred in the action if the county prevails, as the county reserves the right to seek to recover reasonable attorney fees, on a case by case basis, pursuant to Government Code Section 25845, subdivision (c). In those cases in which the county seeks to recover reasonable attorney fees, the other party may likewise do so.

The Sheriff shall mail notice via certified mail within twenty days of the response for which the person is liable giving rise to such costs. The Sheriff shall calculate and compile an itemized list of applicable response costs. The notice shall contain 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 loud and unruly gathering occurred;
3. The date and time of the response;
4. The law enforcement, fire and/or emergency service responder who responded;
5. The date and time of any previous warning given pursuant to Section 9.12.080;
6. An itemized list of the response costs for which the person(s) is liable;
7. Information regarding the date payment is due;
8. The right to request an administrative hearing to challenge the imposition of response costs and/or civil fines;
9. The imposition of a lien on the subject property in the event of non-payment;
10. The election by the County under Government Code Section 25845, subdivision (c), to allow for recovery of the prevailing party's attorneys fees in the event of an administrative hearing or subsequent appeal.

The responsible person must remit payment of the noticed costs and/or civil fines to the County of Napa within forty-five days of the notice thereof. The payment of any such costs shall be stayed upon a timely request for an administrative hearing made pursuant to Section 9.12.090.

B. If following an administrative hearing, appeal, or other final determination, the owner of the property is determined to be the responsible person for costs of this section, such costs, if unpaid within forty-five days of the notice of the final determination, shall become a lien to be recorded against the property on which the violation occurred pursuant to Section 1.20.110. Such costs shall be collected in the same manner as county taxes, and thereafter the property upon which they are a lien shall be sold in the same manner as property now is sold for delinquent taxes.

C. County counsel shall have the authority to file any action or proceeding to recover such civil fines, public safety response costs, expenses and/or civil fines, and take any other actions at law which he may deem necessary to recover same.

**9.12.110 Remedies cumulative-Actions-Relationship to other laws.**

The remedies provided under this chapter are cumulative, and shall not restrict the county to any other remedy to which it is entitled under law or equity. Nothing in this chapter shall be deemed to preclude the imposition of any criminal penalty under state law. Nor shall anything in this chapter be deemed to conflict with any penalty or provision under state law, or prohibit any conduct authorized by the state of federal constitution.

**SECTION 3.** Pursuant to Section 2.22.030 of this code, the County Hearing Officer is assigned the duty of conducting the hearings required by Section 9.12.090 and to decide such matters in the manner set forth in subsection (a) of Section 27722 of the Government Code.

**SECTION 4.** It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

**SECTION 5.** If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

**SECTION 6.** This Ordinance shall be effective thirty (30) days from and after the date of its passage.

**SECTION 7.** A summary of this Ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and read at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the \_\_\_ day of \_\_\_\_\_, 2010, and passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the \_\_\_ day of \_\_\_\_\_, 2010, by the following vote:

AYES: SUPERVISORS \_\_\_\_\_  
 \_\_\_\_\_

NOES: SUPERVISORS \_\_\_\_\_

ABSTAIN: SUPERVISORS \_\_\_\_\_

ABSENT: SUPERVISORS \_\_\_\_\_

\_\_\_\_\_  
 DIANE DILLON, Chair  
 Napa County Board of Supervisors

ATTEST: GLADYS I. COIL  
 Clerk of the Board of Supervisors

By: \_\_\_\_\_

<b>APPROVED AS TO FORM</b> <b>Office of County Counsel</b>	<b>Approved by the Napa County</b> <b>Board of Supervisors</b>
By: <u>Robert C. Martin (by e-signature)</u> Deputy County Counsel	Date: _____
By: <u>Sue Ingalls (by e-signature)</u> County Code Services	Processed by: _____
Date: <u>April 21, 2010</u>	Deputy Clerk of the Board

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON \_\_\_\_\_.

\_\_\_\_\_, DEPUTY  
 GLADYS I. COIL, CLERK OF THE BOARD