

## CHAPTER TWO: PROHIBITED ACTIVITIES

### Subchapter 2.06: Unruly Gathering

#### 2.06.010 Purpose.

The purpose of this subchapter is to assist the Police Department in controlling loud and unruly gatherings, to defray the cost of providing an emergency response during a subsequent call to such prohibited gatherings, and to deter noisy or dangerous gatherings which are disturbing the public peace. This subchapter shall not apply to assemblies, meetings, gatherings, demonstrations or marches supporting or espousing political, social, ethical, religious or other causes or beliefs, the expression of which is entitled to protection under the United States or State Constitution. This subchapter is enacted pursuant to the authority of Government Code Sections 38771 through 38773.5 and pursuant to the police powers of the Town of Colma.

[History: ORD. 731, 12/11/13]

#### 2.06.020 Definitions.

The following terms used in this subchapter shall have the meanings set forth in this section:

(a) *Prohibited Gathering* shall mean the conduct prohibited in section 2.06.030(a) of this subchapter.

(b) *Responsible person(s)* shall mean:

(1) the owner of the property on which a prohibited gathering is conducted;

(2) each person(s) with a right of possession in the property on which a prohibited gathering is conducted, including, but not limited to, a tenant of the property if the gathering is on private property, or a permittee if the gathering is a permitted gathering on public property;

(3) each parent or legal guardian of responsible persons under the age of twenty-one years; and

(4) each person or persons who organized, sponsored or accepted responsibility for such gathering.

(c) *Special security services* shall mean the provision of any police, fire or other emergency response service to a prohibited gathering within twelve months of a first response as provided in this subchapter.

[History: ORD. 731, 12/11/13]

#### 2.06.030 Unruly Gathering Prohibited; Exceptions.

(a) *Prohibited Conduct.* It shall be unlawful to allow, host, attend, participate in, or conduct a gathering of five or more persons on any private property in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood and is in violation of law. Illustrative of such unlawful conduct are

excessive noise or traffic, obstruction of public streets by crowds or vehicles, illegal parking, public drunkenness, public urination, the service of alcohol to minors, fights, disturbances of the peace, and littering.

(b) *Public Nuisance.* A prohibited gathering constitutes a public nuisance and may be abated by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and citation or arrest of any law violators under any applicable ordinances and state statutes.

(c) *Vicarious Liability.* This ordinance imposes vicarious as well as direct liability upon responsible persons; that is, each responsible person shall be liable under this subchapter whether or not present at the prohibited gathering resulting in the emergency response giving rise to the imposition of special security service charges.

(d) *Exceptions*

Nothing in this subchapter shall be construed to impose liability on a responsible person in the following circumstances:

(1) When the responsible person was not on or about the premises at any time during the prohibited gathering or during the twenty-four-hour period preceding the Town's response to the prohibited gathering and had no prior knowledge of the gathering that ultimately resulted in the city response and cost assessment, provided however, that this exception shall not apply to a responsible person who had been notified pursuant to section 2.06.040 of a previous unruly gathering.

(2) Where an invited guest engages in conduct which the responsible person could not reasonably foresee and the conduct is an isolated instance of the a guest violating the law which the responsible person is unable to reasonably control without the intervention of the police; or

(3) Where the responsible person could not reasonably exclude or control an uninvited person without the intervention of police.

[*History:* ORD. 731, 12/11/13]

#### **2.06.040 Notice and Warning; Posting and Mailing.**

(a) *Notice at the scene.* When a police officer responds to a first prohibited gathering at premises in the Town with a given address, the officer shall inform any responsible person at the scene that the officer has determined that a prohibited gathering exists and that each responsible person will be charged for the cost of any special security services required for each subsequent response to the scene within the next twelve months following the first response. If a responsible person cannot be identified at the scene, the Police Department may subsequently return to the scene and issue the warning to a then-present responsible person.

(b) *Posting of Notice.* Within seven days after the police department responds to a prohibited gathering, a Town representative shall post a notice on the premises at which such prohibited gathering occurred stating that the intervention of the police has been necessitated as a result of a prohibited gathering, the date of the police intervention, and that any

subsequent prohibited gathering within the next twelve months on the same premises that necessitates police intervention shall result in the joint and several liability of each person attending or participating in the prohibited gathering, and of each responsible person allowing or conducting the prohibited gathering. The notice shall remain posted for ninety (90) days. The residents and owner of such property shall be jointly responsible for ensuring that such notice is not removed or defaced and it shall be an infraction if such notice is removed, obscured or defaced, provided, however, that the residents of the premises or sponsor of the prohibited gathering, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

(c) *Mailing or Delivery of Notice.*

(1) If the property owner does not reside on the property, then within ten days after the police department responds to a prohibited gathering, a Town representative shall mail a notice of the intervention to each property owner on the Town of Colma property tax assessment records and shall advise the property owner that any subsequent intervention within twelve months on the same premises shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth below.

(2) A Town representative shall also mail the notice of intervention to each responsible person who does not reside on the property where the police intervened.

(3) Instead of mailing, the notice of intervention may be personally served on the property owner or on each responsible person who does not own or reside on the property where the police intervened.

(d) *Directory.* The notice provisions of this section are directory, not mandatory.

(e) *One Notice.* A person who receives notice by any one of the methods described in this section may be held liable for a fine, penalty or cost recovery under this subchapter.

[*History:* ORD. 731, 12/11/13]

**2.06.050 Enforcement; Penalties.**

(a) A first or second violation of this subchapter within a twelve-month period is punishable as an infraction. A third or subsequent violation within twelve months of the first violation shall constitute a misdemeanor. The punishments for misdemeanors and infractions are set forth in subchapter 1.05 of the Colma Municipal Code.

(b) The fines prescribed in this subchapter 1.05 of the Colma Municipal Code are in addition to liability for any special security service charges that may be assessed pursuant to this subchapter.

(c) The second, third or subsequent violation fines prescribed in Colma Municipal Code subsections 1.05.020(c)(2) and (c)(3) are payable whether or not the responsible person at the time of the current prohibited gathering is the same person who was the responsible person for any prior prohibited gathering at those premises. In calculating the fine payable, the official

assessing the fine shall count backward starting from the date of the most recent prohibited gathering to determine how many prior prohibited gatherings have taken place at the premises in question during the statutory twelve-month period. A warning given pursuant to Section [2.06.030](#) shall remain in effect for the premises at a given address until a full twelve-month period has elapsed during which there have been no prohibited gatherings at those premises.

[*History:* ORD. 731, 12/11/13]

### **2.06.060 Cost Recovery for Special Security Services.**

(a) *Responsible Persons Liable for Costs.* When the Police Department or other emergency responder responds to a prohibited gathering at premises with a given address in the Town within twelve months of a warning given to a responsible person pursuant to this subchapter, or while any such warning remains in effect pursuant to this subchapter, a Colma police officer or the Code Enforcement Officer may issue an Administrative Citation under subchapter 2.01 of the Colma Municipal Code to abate the nuisance and recover the costs incurred by the Town in its attempt(s) to have the violation corrected and in providing special security service for all subsequent responses during that twelve-month period. All responsible persons shall be jointly and severally liable for the costs incurred by the Town in its attempt(s) to have the violation corrected and in providing special security service for the initial and all subsequent responses during that twelve-month period.

(b) *Procedure; Lien.*

(1) The procedures set forth in subchapter 2.01 of the Colma Municipal Code shall apply for issuing, appealing and enforcing the Administrative Citation issued to abate prohibited gatherings.

(2) Charges for special security service shall include a reasonable charge for the emergency responders' time and actual costs of any equipment used or damaged in connection with the response. The bill shall be a debt owed to the Town and failure to pay that bill within thirty days is a violation of this code. If the Town is obliged to initiate litigation or other proceedings of this code to recover this debt, the responsible person shall be liable for costs of suit, attorney's fees, and costs of collection.

(3) When the full amount due to the Town for subsequent response costs as set forth in this subchapter is not paid by the person or persons responsible within thirty days of the date of the billing for such costs, the Code Enforcement Officer may file with the office of the tax collector of the county of San Mateo a lien, as set forth in section 2.01.310 of this Code.

### **2.06.070 When Landlord May Charge Tenant.**

A Landlord shall be prohibited from charging residential tenants a deposit against potential cost assessments levied pursuant to this subchapter unless, during the current or any previous lease agreement with the landlord for the premises which are the subject of the lease agreement, the tenants were cited for violating this subchapter and the citation was upheld. A no-contest plea and payment of a fine for violating this subchapter shall constitute the upholding of a citation.

### **2.06.080 Cumulative Remedies.**

The remedies set forth in this section are cumulative and shall not limit or replace any other available remedies or penalties, civil or criminal, whether in this ordinance or any other ordinance or law.

### **2.06.090 Service of Alcoholic Beverages to Minors.**

The city council hereby finds that the service of alcohol to minors at prohibited gatherings and the consumption of alcohol by minors at prohibited gatherings has in the past and continues to pose a threat to the health and safety of all persons who reside in the Town and also causes significant disruption of Town residents' quiet enjoyment of their households, especially in the Town's residential neighborhoods. In addition, such conduct on behalf of persons who serve alcohol to minors and minors who consume alcohol at prohibited gatherings results in the expenditure of a disproportionate percentage of the Police and public safety resources which are underwritten primarily by general municipal taxes paid to the Town by its taxpayers and residents. It is therefore the policy of the City Council that in responding to prohibited gatherings, the Police Department shall strictly enforce any and all applicable state laws pertaining to the service of alcohol to minors, and the consumption of alcohol by minors, and, with respect to minors in possession of alcohol, the Police Department shall establish a "no tolerance" protocol by which the Police Department contacts, or causes the minor's school to contact, the minor's parents or legal guardians whenever the minor is found to be in possession of alcohol or narcotics or found to be intoxicated at a prohibited gathering. Where the minor's school has an internal student disciplinary office any such incident shall likewise be reported to that office.