

ORDINANCE NO. 815

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX AMENDING CHAPTER 9.28, ENTITLED "SOCIAL HOST ACCOUNTABILITY" OF THE FAIRFAX MUNICIPAL CODE TO PROHIBIT LOUD OR UNRULY GATHERINGS WHERE MARIJUANA IS SERVED TO, INGESTED BY OR IN POSSESSION OF UNDERAGE PERSONS; ADDING PARTY BUSES AND LIMOUSINES TO THE GATHERINGS WHERE LOUD AND UNRULY PARTIES ARE PROHIBITED; AND ADDING PARTICIPATION AND GRADUATION FROM A JUVENILE DIVERSION PLAN OR PAYMENT OF A CIVIL FINE

WHEREAS, the Social Host Accountability Ordinance was adopted by the Town in 2007; and

WHEREAS, the primary purpose of the Social Host Accountability Ordinance is to promote the reduction of underage drinking and use of controlled substances by imposing administrative fines on persons responsible for loud or unruly gatherings where alcohol and/or controlled substances are consumed by, served to or in the possession of underage persons; and

WHEREAS, the County of Marin reports that 40% of eleventh graders in the County currently (within the past 30 days) consume alcohol, 24% are binge drinking and 30% use marijuana, and that these averages are significantly higher than California averages; and

WHEREAS, efforts by the County of Marin in conjunction with the Youth Leadership Institute and Marin Prevention Network have resulted in a recommendation to make three changes to strengthen social host ordinances and create a uniform policy countywide, including (1) adding marijuana, (2) including limousines and party buses, and (3) requiring restorative justice programs for underage offenders; and

WHEREAS, the Fairfax Town Council desires to take all efforts that support the protection of the youth of Marin County and to reduce underage substance use; and

WHEREAS, the Fairfax Town Council has reviewed all written evidence and oral testimony presented to date on this matter.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and are hereby incorporated into this Ordinance.

Section 2. Chapter 9.28 of the Fairfax Municipal Code is hereby amended and fully restated as provided in Exhibit "A" attached hereto and incorporated herein by reference.

Section 3. **CEQA.** The Town Council hereby determines that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment. The

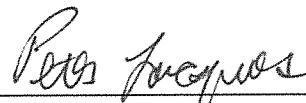
Ordinance involves clarifications and changes to the enforcement and penalties associated with loud or unruly gatherings.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

Section 5. Effective Date and Posting. This Ordinance shall be effective 30 days following its adoption by the Town Council. Copies of this Ordinance shall, within fifteen days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: 1. Bulletin Board, Town Hall Offices; 2. Bulletin Board, Fairfax Post Office; and 3. Bulletin Board, Fairfax Women's Club Building, located at 46 Park.

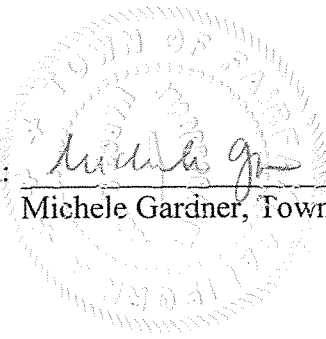
The foregoing Ordinance was introduced at a meeting of the Town Council on the 6th day of December 2017, and duly adopted at the next regular meeting of the Town Council on the 16th day of January, 2018, by the following vote, to wit:


AYES: ACKERMAN, COLER, GODDARD, LACQUES, REED
NOES: None
ABSENT: None
ABSTAIN: None



PETER LACQUES, Mayor

Attest:




Michele Gardner, Town Clerk

1/24/18
Date

EXHIBIT "A"

CHAPTER 9.28: SOCIAL HOST ACCOUNTABILITY

Section:

9.28.010 Legislative purpose

9.28.020 Legislative findings

9.28.030 Title

9.28.040 Definitions

9.28.050 Prohibition of loud or unruly gatherings where alcohol, cannabis and/or any controlled substance is served to, consumed by, or in the possession of underage persons

9.28.060 Violations/administrative fines/juvenile diversion

9.28.070 Hearings on the imposition of administrative fines; appeals

9.28.080 Administrative fines; debt to town; enforcement

9.28.090 Severability and preemption

§ 9.28.010 LEGISLATIVE PURPOSE.

The purposes of this chapter are:

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

(B) To promote the reduction of underage drinking and use of controlled substances by imposing administrative fines on persons responsible for loud or unruly gatherings where alcohol and/or controlled substances are consumed by, served to or in the possession of underage persons; and

(C) To facilitate the enforcement of laws prohibiting the service to, consumption of, or possession of alcoholic beverages, marijuana/cannabis and/or controlled substances by underage persons.

(Ord. 725, passed 11-7-2007; Am. Ord. 802, passed 8-3-2016)

§ 9.28.020 LEGISLATIVE FINDINGS.

The Town Council finds as follows:

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

(B) The occurrence of loud or unruly gatherings on private property where alcoholic beverages and/or controlled substances are served to, consumed by, or in the possession of underage persons is harmful to the underage persons themselves and is a threat to the public

health, safety, or quiet enjoyment of residential property and the general welfare;

(C) The town, through the Police Department, has made numerous and substantial efforts to enforce underage drinking and controlled substance laws; yet, despite these efforts, alcohol and controlled substance use by youth remains a serious problem in the town, contributing significantly to the incidence of adolescent crime, addiction, sexual assault, truancy, driving under the influence, and motor vehicle crashes involving alcohol and/or controlled substances and causing injury and/or death;

(D) Underage persons often obtain alcoholic beverages and/or controlled substances at gatherings held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the service to, possession by, and/or consumption of alcohol and/or controlled substances by underage persons. The town wishes to prevent occurrences wherein persons responsible for loud or unruly gatherings on private property over which they have possession or control have failed to ensure that alcoholic beverages and/or controlled substances are not served to, consumed by or possessed by underage persons at these gatherings;

(E) The town further wishes to encourage residents to prevent the occurrence or recurrence of loud or unruly gatherings, including those where alcoholic beverages and/or controlled substances are served to, consumed by or possessed by underage persons, on private property, which seriously disrupt neighboring residents' quiet enjoyment of their property;

(F) Control of loud or unruly gatherings on private property where alcoholic beverages and/or controlled substances are served to, consumed by, or in the possession of underage persons is necessary when such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;

(G) The occurrence of loud or unruly gatherings on party buses or limousines where alcoholic beverages, controlled substances and/or marijuana are served to, ingested by or in the possession of underage persons is harmful to the underage persons themselves and is a threat to the public health, safety, or quiet enjoyment of the streets and highways as well as other areas where a party bus or limousines drives, parks or temporarily stops;

(H) Persons held responsible for abetting or allowing loud or unruly gatherings where alcohol and/or controlled substances are served to, consumed by, or in the possession of underage persons will be more likely to properly supervise or to stop such conduct at gatherings held on property in their possession or under their control;

(I) Problems associated with loud or unruly gatherings at which alcoholic beverages and/or controlled substances are served to, consumed by, or in the possession of underage persons are difficult to prevent or deter unless the town has the legal authority to issue an administrative citation for an administrative fine;

(J) The intent of this chapter is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish;

(K) California Business and Professions Code § 25658 makes it unlawful for a person under the age of 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 21 years;

(L) According to local, state and federal surveys, alcohol is overwhelmingly and consistently the most widely used drug at all adolescent age levels. A child who begins alcohol use prior to age 15 is four times as likely to experience alcohol dependence than one who refrains from alcohol use until age 20 or older;

(M) California Health and Safety Code §§ 11350 and 11377 make it unlawful for any person to possess enumerated controlled substance without a written prescription, with limited exceptions;

(N) Subject to certain exceptions authorized by law, California Health and Safety Code §

11357 makes it unlawful for persons under the age of 21 to possess marijuana/cannabis and marijuana/cannabis products;

(O) According to the National Center on Addiction and Substance Abuse, nine out of 10 people with addiction began smoking, drinking or using other drugs before they turned 18; and

(P) Subsections (A) through (J) are equally valid to the service of, ingestion of or possession of marijuana/cannabis by underage persons. It is the finding of the Town Council that the addition of marijuana/cannabis to the prohibition outlined in Section 9.28.050 is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth and other residents of the town.

(Q) This Town Council therefore determines that this chapter is a reasonable and necessary means to protect and promote the health, safety, and general welfare of the youth and other residents of the town.

(Ord. 725, passed 11-7-2007; Am. Ord. 802, passed 8-3-2016)

§ 9.28.030 TITLE.

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

(Ord. 725, passed 11-7-2007)

§ 9.28.040 DEFINITIONS.

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

ALCOHOL. 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.

CONTROLLED SUBSTANCE. A drug or substance whose possession and use are regulated under the California Uniform Controlled Substances Act (Health and Safety Code §§ 11000 *et seq.*). Such term does not include any drug or substance for which the individual found to have consumed or possessed such substance has a valid prescription issued by a licensed medical practitioner authorized to issue such a prescription, or in the case of medical cannabis, a recommendation for medical marijuana from an approved provider, or a State of California medical marijuana ID card.

JUVENILE. Any person less than 18 years of age.

JUVENILE DIVERSION PROGRAM. A juvenile diversion program approved by the Chief of Police of the Town of Fairfax or his/her designee that includes components such as peer to peer review, requires accountability for a participant, requires parent participation for the affected underage person and involves interactive participation by underage participants. A juvenile diversion program can also include participation in a restorative justice type program (e.g., Youth Court).

LOUD OR UNRULY GATHERING. A party or gathering of two or more persons at a

residence or on other private property or rented public property or on a party bus or limousine 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;
- (2) Excessive traffic;
- (3) Obstruction of public streets and/or the presence of unruly crowds that have spilled into public streets;
- (4) Public intoxication or unlawful public consumption of alcohol or alcoholic beverages, marijuana or any controlled substance;
- (5) Assaults, batteries, fights, domestic violence or other disturbances of the peace;
- (6) Vandalism;
- (7) Litter; or
- (8) Any other conduct that constitutes a threat to the public health, safety, or quiet enjoyment of residential property or the general welfare.

MARIJUANA. All parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The prohibition herein includes marijuana/cannabis in any form including but not limited to cigarettes, vapor, hashish, food products/edibles containing marijuana or concentrated marijuana and any other product of marijuana. For purposes of this chapter, the term “marijuana” may be used interchangeably with the term cannabis. Such term does not include medicinal marijuana possessed with a recommendation for medical marijuana from an approved provider, or a State of California medical marijuana ID card.

MINOR. Any person less than 21 years of age.

PERSON RESPONSIBLE FOR THE EVENT. Includes, but is not limited to:

- (1) The person who owns, rents, leases or otherwise has control of the premises where the gathering occurs;
- (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 administrative fine.

UNDERAGE PERSON. Any person less than 21 years of age and shall have the same meaning as **MINOR**, defined in this section.

(Ord. 725, passed 11-7-2007; Am. Ord. 802, passed 8-3-2016)

§ 9.28.050 PROHIBITION OF LOUD OR UNRULY GATHERINGS WHERE ALCOHOL, MARIJUANA AND/OR ANY CONTROLLED SUBSTANCE IS SERVED TO, CONSUMED BY, OR IN THE POSSESSION OF UNDERAGE PERSONS.

Except as permitted by Article 1, Section 4, of the California Constitution, no person shall knowingly suffer, permit or host a gathering at his or her place of residence or other private property, place or premises or host a gathering at a public place under his or her control or arrange for a party bus or limousine or renting the same where two or more persons under the age of 21 are present, where the gathering is loud or unruly and alcoholic beverages, marijuana and/or any controlled substance is in the possession of, being consumed by, or served to any underage person.

(Ord. 725, passed 11-7-2007; Am. Ord. 802, passed 8-3-2016)

§ 9.28.060 VIOLATIONS/ADMINISTRATIVE FINES.

(A) It shall be a civil violation for a person to knowingly conduct or allow a loud or unruly gathering where alcohol, marijuana and/or any controlled substance is served to, consumed by, or in the possession of an underage person or persons 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 or on a party bus or limousine where the person responsible for the event either rents or arranges the party bus or limousine during the loud or unruly gathering. The enforcement officer, 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 the enforcement officer to issue this citation.

(B) *Administrative fine; juvenile diversion programs.* A first violation of this chapter shall result in a citation with a \$750 fine. A second violation shall result in a citation with an \$875 fine. A third violation shall result in a citation with a \$1,000 fine. For underage offenders, the administrative fines set forth above may be waived, in the discretion of the Chief of Police, upon proof of successful completion of a juvenile diversion program.

(C) The enforcement officer shall give notice of a violation of this chapter by issuing a citation to any and all responsible persons identified by the chapter within ten 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.

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

(E) Notwithstanding the provisions of § 1.08.010 of the Town Code, a violation of this chapter shall constitute a civil violation only, and shall not constitute an infraction or misdemeanor.

(Ord. 725, passed 11-7-2007; Am. Ord. 802, passed 8-3-2016)

§ 9.28.070 HEARINGS ON THE IMPOSITION OF ADMINISTRATIVE FINES; APPEALS.

(A) *Administrative hearing.*

(1) Any person subject to an administrative fine pursuant to § 9.28.050 shall have the right to request an administrative hearing within 45 days of the issuance of a citation for a civil violation of this chapter. To request such a hearing, the person requesting the hearing shall notify the Town Clerk's Office in writing within 45 days of the issuance of the citation.

(2) The Town Clerk's Office shall refer any request for a hearing under § 9.28.050 to a hearing officer appointed by the Town Manager. The hearing officer shall conduct a hearing on the matter within 60 days of the request for the hearing unless one of the parties requests a continuance for good cause. The hearing officer shall render a decision within ten days of the conclusion of the hearing. The hearing officer may, in his or her discretion, permit the fine to be satisfied by the performance of community service.

(B) *Appeal from decision of hearing officer.* The person upon whom an administrative fine is imposed pursuant to § 9.28.050 may appeal the decision of the hearing officer to the Town Council in accordance with Chapter 2.44 of the Town Code.

(C) *Appeal to Superior Court.* The person upon whom an administrative fine is imposed pursuant to § 9.28.050 and whose appeal to the Town Council is denied pursuant to division (B) of this section may appeal to the Superior Court pursuant to the procedures outlined in Cal. Gov't Code § 53069.4.

(Ord. 725, passed 11-7-2007)

§ 9.28.080 ADMINISTRATIVE FINES; DEBT TO TOWN; ENFORCEMENT.

The amount of an administrative fine shall be deemed a debt owed to the town by the person found in violation of § 9.28.050 and, if that person is a juvenile, then also his/her parents or guardians. Any person owing such fine shall be liable in an action brought in the name of the town for recovery of such fine.

(Ord. 725, passed 11-7-2007)

§ 9.28.090 SEVERABILITY AND PREEMPTION.

(A) If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable. Nothing in this chapter is intended to regulate the operators or owners of charter party carriers or other matters which are exclusively regulated by the California Public Utilities Commission.

(B) The administrative fines imposed by this chapter do not preclude other potential civil actions or criminal prosecution under any other provision of law.

(Ord. 725, passed 11-7-2007)