

## ARTICLE 11

### SOCIAL HOST ACCOUNTABILITY ORDINANCE

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## ARTICLE 11

### SOCIAL HOST ACCOUNTABILITY ORDINANCE

SEC. 4-11.00 DEFINITIONS. For the purpose of this article, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it shall be apparent from their content that a different meaning is intended:

- a. 'Alcohol.' The definition of "alcohol in Section 23003 of the California Business and Professions Code, as amended from time to time, shall apply to this Article. As of the introduction of this Article, Section 23003 defined "alcohol" to mean 'ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.'
- b. 'Alcoholic beverage.' The definition of 'alcoholic beverage' in Section 23004 of the California Business and Professions Code, as amended from time to time, shall apply to this Article. As of the introduction of this Article, Section 23003 defined "alcoholic beverage" to mean "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.'
- c. 'Juvenile' means any person less than 18 years of age.
- d. 'Minor' means any person less than 21 years of age.
- e. '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
  - (2) The person who organizes or supervises or conducts the event or any other person(s) accepting responsibility for such a gathering.

A responsible person for the loud or unruly gathering need not be present at such gathering resulting in the response giving rise to the imposition of civil penalties and/or response costs. If the person responsible for the event is a juvenile, then the juvenile and the parents or guardians of the juvenile may be jointly and severally liable for the civil penalties or response costs pursuant to this chapter and/or for any administrative penalties set forth in this Article.

- f. 'Public safety services' and/or 'response costs' means the costs associated with response, such as 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 costs of salaries and benefits of law enforcement, fire, and other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with the loud or unruly gatherings, 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;
  - (3) The cost of the use of any City equipment or property, and the cost of repairing any City equipment or property damaged in responding to, remaining at, or leaving the scene of a loud or unruly gathering; and
  - (4) Any other costs recoverable in compliance with California Civil Code Section 1714.9.
- g. 'Unruly gathering' means a party of gathering of two or more persons at a residence or other private property in the City at which alcoholic beverages are being consumed by any underage person when that party or gathering is being conducted in such a manner as to constitute a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law. Such conduct constituting a violation of law for purposes of this definition includes, but is not limited to: excessive noise, excessive traffic, obstruction of public streets by crowds or vehicles, public drunkenness or unlawful public consumption of alcohol or alcoholic beverages, assaults, batteries, fights, domestic violence or other disturbances of the peace, vandalism, littering, or any other conduct that constitutes a threat to public health, safety, quiet enjoyment of residential property, or general welfare.

SEC. 4-11.05 DUTY OF RESPONSIBLE PERSONS. It is the duty of the Responsible persons to not knowingly host, permit, or allow an underage or unruly gathering at a residence or other private property in the City of Hayward concerning which the Responsible person has a right of possession, and to take all reasonable steps to prevent the consumption of alcoholic beverages by any underage person at gatherings at such residence or other private property. Reasonable steps required pursuant to this section include, but are not limited to: controlling access to alcoholic beverages at the gathering; controlling the quantity of alcoholic beverages present at the gathering; verifying the age of persons attending the gathering by inspection drivers' licenses or other government-issued identification cards to ensure that underage persons do not consume alcoholic beverages while at the gathering; and supervising the activities of underage persons at the gathering.

SEC. 4-11.10 UNDERAGE OR UNRULY GATHERINGS ON PRIVATE PROPERTY UNLAWFUL. It is unlawful and a public nuisance for any Responsible persons to knowingly host, permit, or allow an underage or unruly gathering to occur at private property in the City of Hayward concerning which the Responsible person has a right of possession where at least one underage person consumes an alcoholic beverage. For purposes of this Article, a Responsible person knowingly hosts, permits, or allows an underage or unruly gathering where at least one underage person consumes an alcoholic beverage whenever the Responsible person is aware or

should reasonably have been aware that an underage person has consumed an alcoholic beverage at such gathering, had the Responsible person taken all reasonable steps to prevent consumption of alcoholic beverages by underage persons. Violation of this section by any responsible person is subject to the civil and/or administrative penalties set forth in this Article, in addition to recovery of response costs, and any other applicable penalties under applicable law. It shall be prima facie evidence that the responsible person knew or should have known of both the underage or unruly gathering and the consumption of alcoholic beverages by underage persons at the gathering if the Responsible person is present on the property at any point during the gathering. To the full extent permitted by law, owners of properties shall remain responsible persons liable for violations of this Article on such property, regardless of any contract or agreement regarding the property that purports to provide otherwise.

SEC. 4-11.15 EXCEPTION. This Article does not apply to conduct involving the use of alcoholic beverages that is protected by Article I, Section 4 of the California Constitution.

SEC. 4-11.20 CIVIL AND ADMINISTRATIVE ENFORCEMENT AND PENALTIES FOR VIOLATIONS. The Chief of Police (or his or her designee), 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 Chief of Police to issue this civil citation. A first violation of this section shall result in a citation with a \$750.00 fine. A second violation shall result in a citation with a \$1,500 fine. A third or subsequent violation shall result in a citation with a \$2,500 fine.

The Chief of Police (or his or her designee) shall give notice of a violation of this section by issuing a citation to any and all responsible persons identified by the Chief of Police within 30 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.

The civil fine prescribed above is in addition to any response costs for public safety responses that may be assessed pursuant to this Article.

SEC. 4-11.25 IMPOSITION OF RESPONSE COSTS FOR PUBLIC SAFETY RESPONSES. In addition to any civil fine imposed for violation of this section, when any loud or unruly gathering where alcohol is served to, consumed by or in the possession of minors occurs on public or private property and a public safety officer determines that conditions described in Section 4-11.10 exist, the public safety officer shall notify the responsible party or parties of his/her/their liability for the cost of providing public safety services (i.e., fire, ambulance, police and other emergency providers). The response costs for public safety responses shall be separate and distinct from a citation and fine for a civil violation described in Section 4-11.20.

SEC. 4-11.30 ADMINISTRATIVE PENALTIES. Taking into consideration the age and/or financial ability of the responsible person(s) to pay, the hearing office may impose, in addition to or in lieu of civil fines and/or response costs in Sections 4-11.20 and 4-11.25:

- a. Community service work on behalf of the City; and/or
- b. Training, counseling, or classes that are relevant to the purpose of this Article.

- c. Failure to complete the administrative penalties as directed will result in that penalty or penalties being converted to civil fines and/or response costs as set forth herein without further right to appeal.

SEC. 4-11.35 HEARINGS ON THE IMPOSITION OF CIVIL FINE, RESPONSE COSTS, AND/OR ADMINISTRATIVE PENALTIES – APPEALS. Any person subject to a civil fine pursuant to Section 4-11.20, response costs pursuant to Section 4-11.25, or administrative penalties pursuant to Section 4-11.30 shall have the right to request an administrative hearing. The request for the hearing shall be filed in accordance with the time frames set forth in Hayward Municipal Code Section 1-3.150 for appeals. The hearing shall be conducted in accordance with the provisions of Hayward Municipal Code Section 1-3.170.

SEC. 4-11.40 CIVIL FINE AND RESPONSE COSTS – DEBT TO CITY – ENFORCEMENT. The amount of a civil fine and/or response costs shall be deemed a debt owed to the City by the person(s) found in violation of Section 4-11.10 and therefore liable for a fine under Section 4-11.20 and fees under Section 4-11.25, 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 City for recovery of such fine and/or fees. These recovery costs may include reasonable attorneys' fees incurred in the action if the City prevails, as the City reserves the right to seek to recover reasonable attorneys' fees, on a case-by-case basis, pursuant to California Government Code Section 25845, subdivision (c). In those cases in which the City seeks to recover reasonable attorneys' fees, the other party may likewise do so. Civil fines recovered by the City pursuant to this chapter shall be placed in the budget of the Hayward Police Department to be used for the purpose of reducing minor access to alcohol.

SEC. 4-11.45 ENFORCEMENT AUTHORITY. A loud or unruly gathering at a residence or other private property at which service to or consumption of alcohol or alcoholic beverages by minors occurs constitutes a public nuisance and an immediate threat to public health and safety and shall be summarily abated by the Chief of Police by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and/or a citation under this chapter as well as a citation and/or arrest under any other applicable ordinances or state statutes.

SEC. 4-11.50 CUMULATIVE REMEDIES. Nothing in this chapter shall be construed as a waiver by the City of Hayward of any right to seek reimbursement for actual response costs through other legal remedies or procedures.

The civil fines and fees imposed by this Article do not preclude other potential civil actions or criminal prosecution under any other provision of law, including but not limited to Penal Code Sections 272 and 415 and Business and Profession Code Sections 25658, 25658.2 and 25662. This Article shall not be interpreted in any manner that conflicts with the laws or constitutions of the United States or the State of California.