

**ORDINANCE NO. 669**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA,  
COUNTY OF NAPA, STATE OF CALIFORNIA REPEALING AND REPLACING CHAPTER  
9.16 (SPECIAL POLICE RESPONSES) WITH A NEW CHAPTER 9.16  
(SOCIAL HOST ACCOUNTABILITY)**

**WHEREAS**, the City of Calistoga, pursuant to the police 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;

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

**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 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 Calistoga Police Department, in 2009 Police Officers responded to 9 calls for service due to complaints for loud and unruly gatherings; of these responses 2 were a second response to the same property within a six month period;

**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 City with inadequate law enforcement protection;

**WHEREAS**, responses to loud and unruly gatherings result in a disproportionate expenditure of public safety resources, which are underwritten by general taxes paid to the City by its taxpayers and residents;

**WHEREAS**, according to the California Healthy Kids Survey (2009), 34% of Calistoga 9<sup>th</sup> and 11<sup>th</sup> graders report obtaining alcohol at parties or other events outside school – the number one source of alcohol for Calistoga youth;

**WHEREAS**, research regarding underage drinking shows that when communities reduce youth access to alcohol, communities experience reductions in youth alcohol use and related problems;

**WHEREAS**, ordinances that reduce youth access to alcohol from social sources have been recognized as a best practice by the United States Department of Justice;

**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;

**WHEREAS**, the ability of law enforcement to abate gatherings where alcohol is consumed by minors on private property will help to decrease the 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 the overall quality of life of Calistoga residents;

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

**WHEREAS**, problems associated with loud or unruly gatherings are difficult to prevent or deter unless law enforcement has the additional legal authority to impose a civil fine and/or recover the cost of any public safety response;

**WHEREAS**, Government Code sections 53069.4, 54988, and 38771 *et seq.* authorize the City to impose civil fines for violations of City ordinances and recover the costs associated with abating public nuisances;

**WHEREAS**, the intent of this chapter is to protect the public health, safety, general welfare, and quiet enjoyment of residential property, rather than to punish; and

**WHEREAS**, the City Council desires that persons who actively or passively aid, abet, or allow loud or unruly gatherings at which alcoholic beverages are served to, consumed by, or in the possession of minors be held liable for the nuisances created by such gatherings by the imposition of civil fine(s) and/or the costs associated with responding to such gatherings.

**NOW, THEREFORE**, the City Council of the City of Calistoga, County of Napa, State of California, ordains as follows:

**SECTION 1.** The above findings of the City Council are true and correct.

**SECTION 2.** Chapter 9.16 of the Calistoga Municipal Code is hereby repealed and replaced with the following:

### **Chapter 9.16**

### **SOCIAL HOST ACCOUNTABILITY**

#### **Sections:**

<b>9.16.010</b>	<b>Title.</b>
<b>9.16.020</b>	<b>Legislative Purpose.</b>
<b>9.16.030</b>	<b>Definitions.</b>
<b>9.16.040</b>	<b>Loud or Unruly Gathering – Public Nuisance/Penalty.</b>
<b>9.16.050</b>	<b>Protected Activities.</b>
<b>9.16.060</b>	<b>Violation — Civil Fine.</b>
<b>9.16.070</b>	<b>Public Safety Services Fee.</b>
<b>9.16.080</b>	<b>Notice of Violation.</b>
<b>9.16.090</b>	<b>Payment of Fines.</b>
<b>9.16.100</b>	<b>Administrative Hearing.</b>
<b>9.16.110</b>	<b>Hearing Officer Decision -- Appeal.</b>
<b>9.16.120</b>	<b>Billing – Debt To City – Enforcement.</b>
<b>9.16.130</b>	<b>Cumulative Remedies.</b>

**9.16.010 Title.**

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

**9.16.020 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 at which alcohol is consumed by, served to, or in the possession of minors;
- C. Facilitate the enforcement of laws prohibiting the service to, consumption of, or possession of alcoholic beverages by minors; and
- D. Offset the city's costs associated with providing fire, police, and other emergency services to loud or unruly gatherings by recouping some of the costs associated with providing such services.

**9.16.30 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, other private property, or rented public property upon which loud or unruly conduct occurs. Loud or unruly conduct includes without limitation:

1. 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 and quiet enjoyment of life and property;
2. Making, continuing, maintaining, or causing to be made or continued excessive traffic;
3. Obstruction of public streets and/or public rights-of-way;

4. Public drunkenness or unlawful public consumption of alcohol, alcoholic beverages, or other intoxicating substance;
5. Service to or consumption of alcohol, alcoholic beverages, or other intoxicating substance by minors;
6. Assaults, batteries, fights, domestic violence or other disturbances of the peace;
7. Vandalism or litter; or
8. Conduct that constitutes a threat to the public health, safety, general welfare, or quiet enjoyment of residential property.

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

"Other private property" refers to a hotel or motel room; assembly hall or meeting room; common room of a dwelling unit used for a party (e.g., recreation room of an apartment building); site in a privately-owned campground; privately-owned vacant lot; privately-owned agricultural land; or privately-owned rural land however occupied and whether owned, leased, rented, or used without compensation.

"Responsible person" means and includes without limitation:

1. The person who owns, rents, leases or otherwise has control of the premises where a loud or unruly gathering occurs;
2. The person in charge of the premises where a loud or unruly gathering occurs; and/or
3. The person who organized a loud or unruly gathering.

If the responsible person is a juvenile, the parent or guardian of that juvenile shall also be deemed a responsible person.

"Public safety services fee" refers to the fee imposed to recover a portion of the costs associated with the response by law enforcement, fire and other emergency 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 a loud or unruly gathering, together with the administrative costs attributable to such response;
2. The cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to a loud or unruly gathering; and
3. The cost of any equipment or property used or damaged while responding to 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 used for a party or gathering, and whether owned, leased, rented, or used with or without compensation.

**9.16.40 Loud or Unruly Gathering – Public Nuisance/Penalty.**

It shall be unlawful and constitute a public nuisance for any responsible person to conduct, aid, organize, permit, or host a loud or unruly gathering. A violation of this chapter shall constitute a misdemeanor unless the citing officer, in his or her discretion, charges the violation as an infraction. Any person violating any provision of this chapter shall also be subject to a civil fine if alcohol is served to, consumed by, or in the possession of a minor at the loud or unruly gathering. In addition to the imposition of any civil fines or any other lawful penalty, the responsible person may also be subject to a public safety services fee in accordance with section 9.16.070.

**9.16.050 Protected Activities.**

This chapter shall not apply to activities (1) protected by Article 1, Section 4, of the California Constitution; (2) protected by the First or Fourteenth Amendments to the United States Constitution; or (3) regulated by the California Alcohol Beverage Control Act.

**9.16.060 Violation — Civil Fine.**

A. A violation of this chapter is punishable by the following civil fines:

1. \$500 for a first violation;
2. \$750 for a second violation within six months of the first violation; and
3. \$1,000 for each additional violation within six months of the first violation.

B. In the event that a responsible person in violation of this chapter is a juvenile, the parent or guardian of that juvenile will be jointly and severally liable for the civil fine.

C. The civil fine provided for in this section is in addition to any public safety services fee that may be assessed pursuant to section 9.16.070.

**9.16.070 Public Safety Services Fee.**

A. Regardless whether alcohol is served to, consumed by, or in the possession of minors, a public safety officer responding to a violation of this chapter who determines that there is a threat to the public peace, health, safety, or general welfare may issue a written warning to any responsible person that a subsequent violation of this chapter within six months from the date of the first violation may result in the responsible person being liable for a public safety services fee.

B. Any responsible person who has been warned pursuant to this section shall be liable for a public safety services fee if such person is charged with a subsequent violation of this chapter within six months from the date of the first violation. If more than one responsible

person is liable for the public safety services fee, such persons shall be jointly and severally liable.

C. In the event that the responsible person in violation of this section is a juvenile, the parent or guardian of that juvenile will be jointly and severally liable for the public safety services fee.

#### **9.16.080 Notice of Violation**

The citing officer shall give notice of a violation of this chapter by issuing a notice of violation to the responsible person within thirty days of the violation. The notice of violation shall be served in accordance with Calistoga Municipal Code section 1.04.050 and shall include the following information:

1. The name of the responsible person;
2. The address of the residence or other public or private property where the loud or unruly gathering occurred;
3. The date and time of the public safety and/or emergency response to the loud or unruly gathering;
4. A description of the loud or unruly conduct;
5. The law enforcement, fire and/or emergency service personnel who responded to the loud of unruly gathering, including the name and signature of the citing officer;
6. The date and time of any previous warning given pursuant to section 9.18.070;
7. If applicable, an itemized list of the public safety services fee for which the responsible person is liable;
8. An order prohibiting the continuation or repeated occurrence of the violation;
9. An explanation of how and when to pay the fine;
10. Notification of the right to appeal, including the time within which the violation may be contested and the place to submit a written appeal;
11. Notification that the city may impose a lien on the subject property in the event of non-payment of any fines and/or fees;
12. If applicable, any election by the city under Government Code Section 38773.5 or any other state or local law to allow for recovery of attorneys' fees in the event of an administrative proceeding or subsequent appeal.

**9.16.090 Payment of Fines.**

A. Within thirty days from the date of service of the notice of violation, the responsible person shall pay the fine and/or fee to the City Clerk.

B. Any fine and/or fee paid pursuant to this section shall be refunded in accordance with section 9.16.110 if it is determined, after a hearing, that the person charged with the fine and/or fee was not responsible for the violation or that there was no violation as charged.

C. Any responsible person who is unable to pay the fine and/or fee may file a request for fee waiver with the city manager ten calendar days from the date of service of the notice of violation.

13. The request for fee waiver shall be in writing, describe why the fine cannot be paid, and include any relevant documentation supporting the request. The request must be accompanied by a sworn affidavit and must demonstrate to the satisfaction of the city manager the responsible person's actual financial inability to pay the full amount of the fine and/or fee.

14. Once the request for fee waiver is filed, the requirement to pay the fine and/or fee shall be stayed until the city manager determines whether to grant or deny the request.

15. If the city manager grants the request for fee waiver, the responsible person shall not be required to pay the fine and/or fee. Granting a request for fee waiver shall not excuse or discharge any continuation or repeated occurrence of any violation of this chapter, nor shall it bar further enforcement action by the city.

16. If the city manager denies the request for fee waiver, the fine and/or fee must be paid within fifteen calendar days from the date of service of the city's manager determination. The city manager may also impose a schedule for payment of the fine that shall not exceed 180 days from the date of his or her determination.

17. The city manager's determination shall be (1) made within ten calendar days of the request, (2) in writing, and (3) served via U.S. certified mail, return receipt requested. The city manager's determination shall be final.

**9.16.100 Administrative Hearing.**

A. Any responsible person subject to a civil fine and/or public safety services fee may request an administrative hearing within thirty days from the date of service of the notice of violation. Any such request shall be in writing and presented to the city clerk.

B. An administrative hearing shall not be held unless the responsible person has (1) requested a hearing, in writing, from the city clerk, and (2) deposited the civil fine and/or fee with the city.

C. The city manager shall compile a list of qualified hearing officers and shall designate the hearing officer for the administrative hearing by random selection from the list, subject to availability of each particular hearing officer. The responsible person may request the city manager to recuse a hearing officer for reasons of actual bias or prejudice against the

responsible person's cause. The hearing officer shall not be an employee of the city nor have any employment relationship with the city, except for that of hearing officer. The hearing officer's employment, evaluation, compensation, and/or benefits shall not be conditioned, either directly or indirectly, upon the amount of fine imposed on the responsible person or the number of violations upheld by the hearing officer.

D. The hearing officer shall conduct the hearing within sixty days of the request for the hearing unless one of the parties requests a continuance for good cause.

E. At least ten calendar days before the hearing, the responsible person shall be provided with copies of any and all citations, reports, and other documents submitted or relied upon by the citing officer. No other discovery shall be permitted.

F. The formal rules of evidence shall not apply to the administrative hearing. All relevant evidence may be considered, and the hearing officer has the discretion to exclude evidence that he or she finds to be irrelevant or repetitive.

G. The responsible person contesting the fine and/or fee shall be given the opportunity to (1) testify and present witnesses; (2) introduce relevant evidence; (3) cross-examine and/or rebut any witness testifying in support of the civil fine and/or fee; and (4) be represented by anyone who is lawfully permitted to do so.

H. The failure of a responsible person to appear at the administrative hearing shall constitute a forfeiture of the fine and/or fee and a failure to exhaust his or her administrative remedies.

I. The hearing officer may continue the hearing and request additional information from the citing officer or the responsible person before issuing a written decision.

J. In an administrative proceeding, the prevailing party shall be entitled to recover its reasonable attorneys' fees, but only if the city elects in writing, at the initiation of the administrative proceeding, to seek recovery of its own attorneys' fees. In no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the administrative proceeding.

#### **9.16.110 Hearing Officer Decision – Appeal**

A. After considering all of the testimony and evidence submitted for the hearing, the hearing officer shall issue a written decision to uphold, modify or revoke the fine and/or fee that describes the reasons for the decision. The hearing officer's decision shall be final.

1. If the hearing officer determines that the fine and/or fee should be upheld, the amount of the fine and/or fee on deposit with the city shall be retained by the city.

2. If the hearing officer determines that the fine and/or fee should be modified, the city shall refund the difference between the amount of the original fine and/or fee and the modified fine and/or fee within fifteen calendar days from the date of service of the hearing officer's decision.



3. If the hearing officer determines that the fine and/or fee should be revoked, the city shall refund the amount deposited within fifteen calendar days from the date of service of the hearing officer's decision.

B. The hearing officer's decision shall include a statement that the aggrieved party may obtain review of the administrative decision by filing (1) an appeal with the Napa County Superior Court in accordance with Government Code section 53069.4, or (2) a petition for writ of mandate in accordance with Code of Civil Procedure sections 1094.5 and 1094.6.

C. Within five calendar days of issuance of the hearing officer's decision, the city shall serve a copy of the written decision on the responsible person by U.S. certified mail, return receipt requested. Service of the hearing officer's decision shall be deemed completed on the date of mailing.

#### **9.16.120 Billing – Debt To City – Enforcement.**

A. The amount of any civil fine and/or public safety services fee shall be deemed a debt owed to the City of Calistoga by the responsible person and, if that person is a juvenile, by his or her parent or guardian.

B. At its discretion, the city may pursue any and all legal and equitable remedies to collect unpaid fines and/or fees imposed pursuant to this chapter. Pursuit of one remedy does not preclude the pursuit of any other remedy. It is intended that persons causing, maintaining, and/or permitting the violation, and not the taxpayers, bear the financial burden of the city's enforcement efforts. Remedies available to the city to collect unpaid fines, fees, and costs include the following without limitation:

1. Referring the delinquent account to a collection agency;
2. Authorizing a lien to be recorded on the property; and/or
3. Authorizing a special assessment upon the property.

C. The city shall be entitled to recover all costs related to enforcing any violations of this chapter that are recoverable under Government Code sections 54988, 38771 *et seq.*, or any other local, state or federal law. Before invoking any of the procedures described in this section, the city shall provide notice to the property owner (if different from the responsible person) based on Napa County's last equalized property tax assessment roll, or the supplemental roll, whichever is more current.

D. Any person who fails to pay any fine and/or fee shall be liable in any proceeding brought by the city for the costs incurred in securing payment of the unpaid amount, including without limitation, administrative costs and attorneys' fees. Such collection costs shall be in addition to any penalties, interest, and/or late charges imposed upon the unpaid fine.

#### **9.16.130 Cumulative Remedies.**

The remedies provided under this chapter are cumulative, and shall not restrict the city's ability to pursue 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, 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 or federal constitutions.

**SECTION 4. Environmental Clearance.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in section 15378) of the CEQA Guidelines because it has no potential to result in physical change to the environment, directly or indirectly.

**SECTION 5. Severability.** 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 City Council of the City of Calistoga 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

**SECTION 6. Effective Date.** This Ordinance shall take effect thirty (30) days after its passage and before expiration of fifteen (15) days after its passage, shall be published in accordance with law in a newspaper of general circulation published and circulated in the City of Calistoga.

**SECTION 7. Publication.** This Ordinance was introduced with the first reading waived at the City of Calistoga City Council meeting of **July 6, 2010** and was passed and adopted at a regular meeting of the Calistoga City Council on **July 20, 2010**, by the following vote:

**AYES: Mayor Gingles, Councilmembers Kraus, Garcia, Slusser**  
**NOES: None**  
**ABSENT: Vice Mayor Dunsford**  
**ABSTAIN: None**

  
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**JACK GINGLES, Mayor**

**ATTEST:**  
  
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**SUSAN SNEDDON, City Clerk**