

ORDINANCE #2011-02

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AMERICAN CANYON
ADDING CHAPTER 9.07 ENTITLED THE SOCIAL HOST ACCOUNTABILITY
ORDINANCE INCLUDING IMPOSITION OF CIVIL FINES AND ABATEMENT COSTS**

The City Council hereby finds as follows:

- A. The City of American Canyon, 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.
- B. The occurrence of a party, gathering or event on private property where alcoholic beverages are served to, consumed by or in the possession or control of an underage person is harmful to underage persons themselves and a threat to the public health, safety, or quiet enjoyment of residential property and the general welfare.
- C. 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 or furnish any alcoholic beverage to any person under the age of twenty-one (21) years.
- D. Law Enforcement response to a party, gathering or event where alcoholic beverages are served to, consumed by or in the possession or control of an underage person causes a drain of law enforcement resources and in some cases, leaves other areas of the City 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 City by its taxpayers and residents.
- E. According to the California Healthy Kids Survey (2008), 30% of Napa County 11th graders report obtaining alcohol at parties or other events outside school and 78% 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.
- F. Underage persons often obtain alcoholic beverages 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 underage service and/or consumption.
- G. Persons responsible for the occurrence of a party, gathering or event on private property where alcoholic beverages are served have a duty to ensure that alcohol is not served to, consumed by or in the possession or control of an underage person at such gatherings.
- H. Communities that have adopted such ordinances have seen reductions in the size of gatherings and reductions in youth perception of ease of access to alcohol.

- I. The ability of law enforcement to abate gatherings where alcohol is consumed by minors on private property will help to decrease abuse of alcohol by minors, physical altercations and injuries, sexual assaults, truancy, driving under the influence of alcohol, adolescent crime, motor vehicle collisions, neighborhood vandalism and excessive noise disturbance thereby improving public safety and overall quality of life of American Canyon residents.
- J. Persons held responsible for abetting or allowing a party, gathering or event, where alcoholic beverages are served to, consumed by or in the possession or control of an underage person will be more likely to properly supervise or to stop such conduct at gatherings held on property in their possession or under their control.
- K. Problems associated with a party, gathering or event where alcoholic beverages are served to, consumed by or in the possession or control 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.
- L. 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 a party, gathering or event where alcoholic beverages are served to, consumed by or in the possession or control of an underage person shall be held liable for the nuisances created by such gatherings, the civil fine(s) for such violations and the costs associated with responding to such gatherings.

The City Council of the City of American Canyon does ordain as follows:

- 1. A new Chapter 9.07 (SOCIAL HOST ACCOUNTABILITY ORDINANCE) is hereby added to the City of American Canyon Municipal Code as set forth in exhibit 1 to this ordinance.
- 2. For the purpose of this ordinance, the City Manager is designated as the City's Hearing Officer and shall decide such matters required by Section 9.07.090 and as specified in Government Code Section 2722 (a).
- 3. 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 the ordinance.

The foregoing ordinance was passed at a Regular Meeting of the City Council of the City of American Canyon, State of California, held on the April 19, 2011 by the following vote:

Mayor Garcia:
 Vice Mayor Bennett:
 Council Member B. Bennett:
 Council Member Coffey:
 Council Member Joseph:

Yes
Yes
Yes
Yes
Yes

Leon Garcia

Leon Garcia, Mayor

ATTEST:
Rebekah Barr
 Rebekah Barr, CMC, City Clerk

APPROVED AS TO FORM:
William D. Ross
 William D. Ross, City Attorney

Chapter 9.07

SOCIAL HOST ACCOUNTABILITY ORDINANCE

Sections:

9.07.010	Title
9.07.020	Legislative purpose.
9.07.030	Legislative findings.
9.07.040	Definitions.
9.07.050	Prohibition of parties, gatherings or events where alcohol is served to, consumed by or in the possession or control of underage persons.
9.07.060	Protected Activities.
9.07.070	Violations(s)/Civil Fine(s).
9.07.080	Imposition of Civil Cost Recovery Fee for public safety responses.
9.07.090	Hearings on the imposition of civil fine and/or imposition of civil cost recovery fee for public safety response—Appeals.
9.07.100	Billing and civil fine and civil cost recovery fee for public safety responses—Debt to City—Enforcement.
9.07.110	Reservation of Legal Options - Remedies cumulative
9.07.120	Severability

9.07.010 Title

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

9.07.020 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 a party, gathering or event where alcoholic beverages are consumed by, served to or in the possession or control of underage persons;
- C. Facilitate the enforcement of laws prohibiting the service to, consumption of or possession or control of alcoholic beverages by underage persons; and
- D. To offset the City’s costs associated with providing fire, police, and other emergency services to a party, gathering or event by imposing a civil fee upon social hosts and/or landowners (including landlords) who allow such party, gathering or event to occur on their premises, at their residences, or at rented facilities for the recovery of costs associated with providing fire, police, and other emergency services to a party, gathering or event where alcohol is served to, consumed by or in the possession or control of an underage person .

9.07.30 Legislative findings.

The City of American Canyon council finds as follows:

- A. City of American Canyon, 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 a party, gathering or event on private property where alcoholic beverages are served to, consumed by or in the possession or control of an underage person is harmful to underage persons themselves and 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 or provide any alcoholic beverage to any person under the age of twenty-one years.

D. Law enforcement response to a party, gathering or event where alcoholic beverages are served to, consumed by or in the possession or control of an underage person causes a drain of law enforcement resources and in some situations, leaves other areas of the City with inadequate law enforcement protection. Responses to such gathering or events result in a disproportionate expenditure of public safety resources, which are underwritten by general municipal taxes paid to the City by its taxpayers and residents.

E. According to the California Healthy Kids Survey (2008), 30% of Napa County 11th graders report obtaining alcohol at parties or other events outside school and 78% 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.

F. Underage persons often obtain alcoholic beverages at a party, gathering or event 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 underage service and/or consumption.

G. Persons responsible for the occurrence of a party, gathering or event on private property where alcoholic beverages are served have a duty to ensure that alcohol is not served to, consumed by or in the possession or control of an underage person at such gatherings.

H. Communities that have adopted such ordinances have seen reductions in the size of parties, gatherings and events and reductions in youth perception of ease of access to alcohol.

I. Law enforcement ability to abate gatherings where alcohol is consumed by minors on private property will help to decrease abuse of alcohol by minors, physical altercations and injuries, sexual assaults, truancy, driving under the influence of alcohol, adolescent crime, motor vehicle collisions, neighborhood vandalism and excessive noise disturbance thereby improving public safety and overall quality of life of American Canyon residents.

J. Persons held responsible for abetting or allowing a party, gathering or event, where alcoholic beverages are served to, consumed by or in the possession or control of an underage person will be more likely to properly supervise or to stop such conduct at gatherings held on property in their possession or under their control.

K. Problems associated with a party, gathering or event where alcoholic beverages are served to, consumed by or in the possession or control 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.

L. 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 a party, gathering or event where alcohol is served to, consumed by or in the possession of an underage person shall be held liable for the nuisances created by such gatherings, the civil fine(s) for such violations and the costs associated with responding to such gatherings.

9.07.040 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.

"Party, gathering or event" means a group of two or more persons at a residence or on other private property or rented public property who have assembled or are assembling for a social occasion or social activity. These terms used individually have the same meaning as when used collectively and may be used interchangeably.

"Minor" means any person less than twenty-one years of age and shall have the same meaning as "underage person" defined below.

"Person(s) responsible for the event" and/or "responsible person(s)" means a person or persons with a right of possession in the premises where the party, gathering or event is held, including, but not limited to:

1. The person(s) who owns, rents, leases or otherwise has control of the premises where the gathering occurs; and/or
2. The person(s) in charge of the premises; and/or
3. The person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a party, gathering or event.

If the responsible person is a juvenile, then 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. To incur liability for the civil fine and/or for the costs incurred for public safety services pursuant to this chapter, the person(s) responsible for the event need not be present at such gathering giving rise to the imposition of such costs. This chapter imposes vicarious as well as direct liability upon a responsible person consistent with State law.

“Public safety services” and/or “Response costs” means the costs associated with responses by law enforcement, fire and other emergency response providers to a party, gathering or event where alcohol is served to, consumed by or in the possession or control of an underage person, including but not limited to:

1. The portion of 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 a party, gathering or event, 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 party, gathering or event; 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 party, gathering or event.

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

“Residence” includes a dwelling unit such as a home, condominium or apartment; structures on the residence other than the dwelling unit including, but not limited to, 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; bodies of water 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.

“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, gathering or event (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 on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented or used without compensation.

“Hearing Officer” for the purpose of this ordinance will be the City Manager or his/her designee.

9.07.50 Unlawful party, gathering or event where alcohol is served to, consumed by or in the possession or control of an underage person.

No person shall suffer, permit or host a party, gathering or event 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 alcohol is served to, consumed by or in the possession or control of an underage person.

9.70.60 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.

9.07.70 Violations(s)—Civil fine(s).

A. It shall be a civil violation for a person to conduct or allow a party, gathering or event where alcohol is served to, consumed by or in the possession or control of an underage person on premises owned by the person responsible for the event, on premises rented by or to the person(s) 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 premise during the party, gathering or 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.

B. Fines.

1. Civil fine: A first violation of this Section shall result in a citation with a five hundred fifty dollar (\$500) fine.

2. A second violation of this Section at the same residence or other private property, or by the same person responsible for the event, shall result in a citation with a seven hundred and fifty dollar (\$750) fine.

3. A third or subsequent violation of this Section at the same residence or other private property, or by the same person responsible for the event, shall result in a citation with a one thousand dollar (\$1,000) fine.

C. The fines prescribed in subsection (B) are in addition to any civil cost recovery fee for public safety services and/or response costs that may be assessed pursuant to Section 9.07.080.

D. Law enforcement shall give notice of a violation of this Section by issuing a citation to any and all persons responsible for the event identified by law enforcement within thirty (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.

E. 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.

9.07.80 Imposition of civil cost recovery fee for public safety responses.

In addition to any civil fine imposed for violation of this Chapter, expenses and fines which may be assessed or imposed as a result of a violation of this Chapter, liability for the cost of providing public safety services (i.e., fire, ambulance, police, and other emergency providers) shall be the responsibility of any person who violates any provision of this Chapter. The cost recovery for public safety responses shall be separate and distinct from a citation and fine for a civil violation described in Section 9.07.070.

A. The amount of cost recovery under this subsection shall be the response costs as well as any associated costs performed by public safety.

B. 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 imposition of civil fine and/or 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 response costs in those situations where those present at the gathering call for emergency services for an actual emergency at the premises.

9.07.090 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 9.07.070 or subject to a civil cost recovery fee for public safety responses pursuant to Section 9.07.080 shall have the right to request an administrative hearing within forty-five (45) days of the issuance of a citation for a civil violation or the issuance of a citation for the imposition of civil cost recovery fees for a public safety response. To request such a hearing, the person requesting the hearing shall notify the City Clerk in writing within forty-five (45) days of the issuance of the citation.

B. The City Hearing Officer is delegated the power and duty to hear any appeal hearing under Section 9.07.070 and/or Section 9.07.080. The City Hearing Officer shall conduct a hearing on the matter within ninety (90) days of the request for the hearing unless one of the parties requests a continuance for good cause. The City Hearing Officer shall render a decision within thirty (30) days of the conclusion of the hearing. Any aggrieved person may obtain review of the decision by filing a petition for mandate with the Superior Court of California, City of Napa, a unified court in accordance with the timelines and provisions set forth in Government Code Section 53069.4.

9.07.100 Billing and civil fine and civil cost recovery fee for public safety responses—Debt to City—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 the City of American Canyon by the person responsible for the event, and, if that person is a juvenile, then also his/her parents or guardian. 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/fees. These recovery costs may include reasonable attorney fees incurred in the action if the City prevails, as the City 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 City seeks to recover reasonable attorney fees, the other party may likewise do so.

The Police Chief shall mail notice via certified mail within thirty (30) days of the response for which the person is liable giving rise to such costs. The Police Chief 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 party, gathering or event occurred;
3. The date and time of the response;

4. The law enforcement, fire and/or emergency service responder who responded;
5. An itemized list of the response costs for which the person(s) is liable;
6. Information regarding the date payment is due;
7. The right to request an administrative hearing to challenge the imposition of response costs and/or civil fines;
8. The imposition of a lien on the subject property in the event of non-payment; and
9. The election by the City 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 and subsequent appeal.

The responsible person must remit payment of the noticed costs and/or civil fines to the City of American Canyon within forty-five (45) 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 9.70.090.

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 (45) 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 1.24.010. 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. City Attorney shall have the authority to file any action or proceeding to recover such civil fines, police services costs, public safety response costs, expenses and/or expenses and/or penalties, and take any other actions at law which he/she may deem necessary to recover same.

9.70.110 Reservation of Legal Options - Remedies Cumulative.

The remedies provided under this Chapter are cumulative, and shall not restrict the City 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 or federal constitution.

9.70.120 Severability

If any section, subsection, sentence, clause, phrase or work of this Ordinance or its application to any person or circumstance 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 the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.